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FEDERAL RAILROAD
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OFFICE OF CHIEF COUNSEL

In the matter of:

**Docket Number FRA 2001-11068, Notice Number 1,
49 CFR Part 219, RIN 2130-AB39, Control of
Alcohol and Drug Use: Proposed Application of
Random Testing and Other Requirements to
Employees of a Foreign Railroad Who are Based
Outside the United States and Perform Train or
Dispatching Service in the United States; Request
for Comments on Even Broader Application of
Rules and on Implementation Issues**

Written Comments by Canadian Pacific Railway

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Docket Management System
U.S. Dept of Transportation
Room PL-401,
499 Seventh Street SW
Washington D.C. 20590-0001

Dear Sir/Madam

Re: Docket Number FRA 2001-11068, Notice Number 1, 49 CFR Part 219, RIN 2130-AB39, Control of Alcohol and Drug Use: Proposed Application of Random Testing and Other Requirements to Employees of a Foreign Railroad Who are Based Outside the United States and Perform Train or Dispatching Service in the United States; Request for Comments on Even Broader Application of Rules and on Implementation Issues

Overview

1. Canadian Pacific Railway (CPR) wishes to provide the following comments on the Notice of Proposed Rulemaking (NPRM) and Request for Comments as published in the December 11, 2001 Federal Register.¹
2. On December 15, 1992 FRA issued an ANPRM² that asked for comment on issues arising from the application of the Omnibus Testing Act³ to foreign railroads operating within the United States.
3. In 1994, FRA determined that a separate rulemaking on international application of the Omnibus Act was unnecessary. As a result, FRA withdrew the ANPRM.

¹ 66 FR Dec 11, 2001

² 57 FR , Dec. 15, 1992 page 59606

³ Omnibus Transportation Employee Testing Act of 1991, Pub. L. No. 102-143 (Omnibus Act) . 49 U.S.C. Section 20140, which is part of the Federal Railroad Safety Act (FRSA), 49 U.S.C. 20101, et seq. 49 U.S.C. Section 20140 is the codification of the Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102-143.

4. In explaining the withdrawal, FRA noted,

Foreign railroads have been subject to portions of FRA's regulations on the control of alcohol and drug use (49 CFR part 219) since February 10, 1986. In the above-mentioned ANPRM, FRA asked for comment on practical considerations arising from international application of the new requirements of the Act, and received none. Foreign railroads generally enter into United States territory only for limited distances and these railroads already comply with existing FRA rules on post – accident and for cause testing. In light of this, and FRA's successful compliance record with foreign railroads, FRA will not proceed with a separate rulemaking on international application of the Act⁴

5. The factors present in 1994, namely limited distance, limited operations, limited risk and regulatory equivalency, which permitted the safe withdrawal of the ANPRM in 1994, exist today.

6. Significant advances in Canadian transportation regulation and the responsible adoption of drug and alcohol policies by Canadian railways have improved on the positive situation identified by FRA in 1994.

7. The regulation of extraterritorial operations by other modes of transport covered by the Omnibus Act is relevant to this NPRM. When the divergent approaches with respect to employees of foreign companies operating in the United States taken by FAA and FMCSA are reviewed, it can be seen that rail more closely fits the approach taken by aeronautics.

8. Limited distance, limited operations, limited risk and regulatory equivalency, are relevant not only for modal comparisons, but also in the analysis of the International obligations of the United States under trade agreements such as NAFTA⁵. Trading partners are required to seek the least trade impact solution in furtherance of their national safety goals.

⁴ 59 FR, Feb 15, 1994 at page 7482.

⁵ North American Free Trade Agreement

9. In return for reciprocal trade opportunities, Canada, the United States and Mexico are required to balance the methods used to achieve legitimate domestic safety initiatives and to consider foreign laws and regulations in any rulemaking process that has extraterritorial impact.

10. Having regard to the limited distances, limited operations, limited risks, regulatory equivalency, modal comparisons, conflicts with Canadian law and International law implications, CPR submits that the exemption for FBFR employees should be continued.

11. If there is a bona fide and compelling reason, supported by valid risk assessments, to extend 49 CFR part 219 to FBFR employees, it should be negotiated directly by the Governments of the United States and Canada rather than between FRA and Canadian railroads in a rulemaking process.

Limited Distance

12. Over 99% of CPR's route miles in the United States are serviced by its U.S. based crews who are subject to all of 49 CFR part 219.⁶

13. There are only 7 locations where CPR's Canadian based crews operate into the United States.

•	Border to Eastport ID	1.7 miles
•	Border to Sweet Grass MT	2.0 miles
•	Border to Portal ND	2.8 miles
•	Border to Noyes MN	3.2 miles
•	Border to Detroit MI	9.0 miles
•	Border to Buffalo NY	7.5 miles
•	Border to Rouses Pt. NY	1.2 miles

14. The total of all track miles in the United States, accessed by CPR's Canadian based crews is 27.4 miles.

⁶ On CPR there is approximately 3,300 route miles in the US mid-west and 1,500 route miles in the northeast US.

15. The limited distances operated by CPR's Canadian based crews, which are necessary to facilitate the interchange of international traffic, does not warrant the removal of the exemption extended under 49 CFR part 219 proposed in the NPRM.

16. CPR believes that distances operated by other Canadian based carriers such as Canadian National and Via Rail Canada are not significantly different although they may include different border entry points and different locations within the United States.

Limited Distance

17. Not only are the distances limited, the operations themselves are quite limited.

18. Across Canada CPR operates an average of 27 trains a day into the United States using Canadian based crews. On an annual basis this translates to approximately 57,000 miles per year. If these 57,000 miles operated in the United States constituted a railroad, it would rank as 354 by size.

19. CPR currently has 64 Canadian crews (128 employees) assigned to pools that may operate into the U.S. Assigned crews are supported by 366 additional employees on 7 spare boards who could be occasionally called for U.S. service.

20. The pool sizes referred to are a snapshot in time and can change due to traffic increases or reductions and crew availability.

21. It is not feasible to exchange all traffic on the Canadian side of the border due to capacity and infrastructure constraints.

22. CPR submits that the limited operation, again necessary only for the purpose of the efficient interchange of traffic, does not warrant the regulatory change proposed in the NPRM.

Limited Risk

23. On an industry basis (CPR, CNR and VIA Rail) we estimate the train mileage in the US from trains operated by crews based in Canada at 0.4 million per year.

24. Using the data supplied by FRA in the RIA, page 39, plus annual train mileage information from FRA bulletins, we estimated the accidents per million train miles under primary or secondary cause code of H101 (Impairment of efficiency or judgment because of drugs or alcohol) at 0.003564 for the period 1985-1998 inclusive. There were no fatalities, but since the probability of a fatality, given an accident, is not zero, we have inserted the fatalities per accident (0.005) for all US train accidents (excluding grade crossing accidents) for the period 1995-2000. There were 0.645 injuries per accident and \$221,273 in track and equipment damage cost per accident.

25. Applying these rates to the 0.4 million train miles in the US by crews based in Canada, we calculate 0.0014 accidents, 0.000007 fatalities, 0.0009 injuries, and \$315 in damage costs, per year.

26. Converting the fatalities and injuries to dollars, and adding 50% of track and equipment damage costs for other costs (damage to lading, wreck clearing, etc.) we get a total of \$635 per year. Converting this amount to a present value over 20 years at FRA's 7% discount rate, we calculate a 20-year present value of \$6,732. That compares with \$250,384 present value for the COST of the regulation to the Canadian railroads.

27. In other words, the benefit/cost ratio on the Canadian side is .027 and the costs are 37 times the benefits.

28. These calculations are conservative, as they do not include costs associated with litigation, labor arbitrations or any infrastructure costs associated with new track construction that would be required to exchange all rail traffic north of the Canada/U.S. border. We would expect costs to be many times higher.

29. Appendix 1 sets out the cost/benefit calculations (without aforementioned costs).

Modal Comparison – extraterritorial application

30. Federal Aviation Administration (FAA) and Federal Motor Carrier Safety Administration (FMCSA) have taken divergent approaches to extraterritorial application of their regulations.

31. FAA withdrew a proposed rulemaking that would have required foreign air carriers to establish alcohol and drug testing programs for their employees performing safety-sensitive aviation functions within the United States⁷.

32. At the other end of the spectrum, FMCSA, applied all of 49 CFR part 382 (FMCSA's equivalent to part 219) to persons and employers of such persons who operate a commercial motor vehicle in commerce in the United States, including foreign-domiciled employees.

33. FAA withdrew its proposed rulemaking because the International Civil Aviation Organization (ICAO) was an appropriate forum for addressing the issue of the control of drug and alcohol in the aeronautics field and there were significant

⁷ 65 FR Jan. 13, 2000 at page 2079

practical and legal concerns raised by various commenters to the proposed rulemaking. The FAA noted,

A significant number of the foreign governments for foreign air carriers that responded to the NPRM expressed support for deferring to ICAO to take action on substance abuse prevention. Their comments also reiterated the concerns expressed following publication of the ANPRM, with further discussion of the possible adverse consequences and costs that would likely follow any imposition of mandatory testing programs. Several commenters noted that the laws of the jurisdiction in which their employees are hired could prohibit employers from complying with mandatory testing regulations imposed by the United States.⁸

34. FAA concluded that in light of significant practical and legal concerns that rulemaking was not the best way to ensure that safety was not compromised. Several factors leading to this decision were noted,

Several factors were weighed in making this determination. The FAA has an active program to assess whether foreign air carriers are held to international standards by their countries of registry – standards that include medical requirements for flight crew members and a prohibition on the operation of aircraft by impaired pilots.

Also, on February 24, 1998, the 153rd Session of the ICAO Council met and adopted amendments to the Standards and Recommended Practices contained in Appendix A of the Chicago Convention. Specifically a standard was adopted which applies to individuals, and prohibits them from performing safety – critical functions while under the influence of any psychoactive substance.⁹

35. CPR submits that the rail situation more closely resembles aeronautics than it does trucking, and the approach taken by FRA should be to continue the current exemptions similar to what FAA did.

36. As was the case with aeronautics, an international body created pursuant to trade/treaty obligations reviewed railroad transport issues. Following the coming into force of the North American Free Trade Agreement (NAFTA) in January 1994, the Land Transportation Standards Subcommittee (LTSS) was established to consider, among other items, the compatibility of rail safety regulations relevant to cross border operations. In keeping with the LTSS's desire, FRA and Transport Canada

⁸ 65 FR , Jan 13, 2000 at page 2080

⁹ 65 FR , Jan 13, 2000 at page 2080

established a close working relationship to develop a process for reviewing the compatibility of operating standards and resolving future regulatory differences.¹⁰

37. After reviewing a number of operational issues including the different regulatory schemes for the control of drug and alcohol in the United States and Canada, the LTSS concluded that the issue of drug and alcohol testing will require additional discussions between the FRA/TC but recognized the legal differences between the regulatory schemes in each country.

38. In a joint statement of accomplishments in Montreal in June of 1998 the LTSS stated under the heading "Rail Safety",

Completion of a comprehensive analysis of regulations affecting rail safety in the three countries. Through this work it has been determined that regulatory differences will not significantly affect the safety of rail operations in cross-border service;¹¹

39. In aviation, FAA commented favorably on nations imposing requirements for medical standards and prohibitions on impaired operators. Both of these features are found in Canadian rail legislation. (See later discussions on the Railway Safety Act¹² medical requirements required for all persons occupying positions critical to safe railway operations and the prohibitions against impaired operations contained in the Criminal Code¹³ and the Canadian Rail Operating Rules enacted pursuant to the Railway Safety Act.)

40. The FAA noted that it had an active program to assess whether foreign air carriers were being held to international standards. CPR submits, FRA has the same ability through the LTSS and/or the joint meetings and joint inspections regularly carried out by Transport Canada and FRA.

¹⁰ "Rail Operating Practices – NAFTA Report, 1997": Transport Canada/U.S. DOT/FRA, page 2

¹¹ "Joint Statement of Accomplishments", Land Transportation Standards Committee, Montreal, June 1998

¹² R.S.C. 1985, c. 32 (4th Supp.)

¹³ R.S.C 1985, c. C-46

41. There is a marked difference between the exposure associated with foreign-based employees engaged in trucking operations and foreign-based rail employees operating in the United States.

42. Canadian based Rail employees travel on fixed routes for limited distances in the United States. (In the case of CPR's Canadian based employees a total just over 27 miles at 7 border locations). Trucking on the other hand can access well over 3 million miles of highway in the United States through approximately 70 northern border locations¹⁴.

43. Volume is another significant distinguishing feature between truck and rail. In 1997 for example, there were over 5.7 million trucks crossing the Canadian/US border into the United States compared to just over 30,000 rail crossings (all companies)¹⁵.

44. CPR submits that the current exemption in 49 CFR part 219 covering foreign-based rail employees operating in the United States is appropriate when compared to other modes of transport covered by the Omnibus Act. It is more restrictive than the approach adopted by FAA in the aeronautics field, and is distinguishable from the approach adopted by FMCSA having regard to the limited distance, limited operations, limited risk and regulatory equivalency associated with few Canadian based rail employees operating in the United States.

Regulatory equivalency

45. The laws of each sovereign nation will not be written identically nor will they legally be able to adopt the identical regulatory schemes in order to achieve the same

¹⁴ Bureau of Transportation Statistics, "Border Crossing Data – Port Locator" at <http://www.bts.gov/itt/cross/can.html> identifies Border crossing points by U.S. State

¹⁵ Bureau of Transportation Statistics, "Border Crossing Data" at <http://www.bts.gov/itt/cross/can.html> sets out incoming truck and train crossings for year 1997.

goals. (See later discussions of international obligations and foreign laws and regulations).

46. Despite the difference between the laws of Canada and the United States, Canada has developed regulatory equivalency which, when measured against limited distance, limited operations and limited risk associated with Canadian based crews operating in the United States, justifies the continuation of the current exemption in 49 CFR part 219.

47. Regulatory equivalency is found in the totality of, an established system of criminal law and regulatory prohibitions against substance abuse in the transportation industry, regulatory initiatives such as medical rules and responsible industry policies which include compliance with 49 CFR part 219 as currently applied to Canada, pre employment, for cause and employee assistance policies directly targeted at the control of drugs and alcohol in the railway industry.

Criminal Code – Prohibitions

48. Under the Criminal Code it is an offence to operate railway equipment while impaired by alcohol or a drug, or to have a blood alcohol concentration level greater than .08%. Penalties including fines and imprisonment are prescribed.

49. Under the Criminal Code, Police Officers (including railway Police Officers) are entitled to test for presence of alcohol through approved breathalyser machines on reasonable cause.

50. The complete Criminal Code statutory framework covering railway operations is attached at Appendix 2.

Railway Safety Act – Prohibitions

51. It is important to note, while the Criminal Code sets blood alcohol concentration of .08% for the purpose of a criminal conviction, the Canadian Rail Operating Rules at Rule “G” do not permit any use while subject to duty,

The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited.

The use of mood altering agents by employees subject to duty, or their possession or use while on duty, is prohibited except as prescribed by a doctor.

The use of drugs, medication or mood altering agents, including those prescribed by a doctor, which, in any way, will adversely affect their ability to work safely, by employees subject to duty, or on duty, is prohibited.

Employees must know and understand the possible effects of drugs, medication or mood altering agents, including those prescribed by a doctor, which, in any way, will adversely affect their ability to work safely.

52. Rule “G” prohibits use of alcohol and drugs when subject to duty, including both over-the-counter and prescription medications that will adversely affect an employees ability to work safely.

53. The Railway Safety Act prescribes fines and penalties including imprisonment for violations of the Act (which would include the CROR provisions). Violations of Rule “G” are subject to disciplinary action up to and including dismissal.

54. Offences, fines and penalties under the Railway Safety Act are attached at Appendix 3.

Railway Safety Act – Medical Rules

55. Section 35 of the Railway Safety Act mandates regular medical examinations for all persons occupying safety critical positions and requires that physicians and optometrists must notify the railway company’s Chief Medical Officer if a person occupying a safety critical position has a medical condition that could be a threat to

safe railway operations and that the physician or optometrist send a copy of this notice without delay to the patient.

56. CPR's list of safety critical positions is set out in Appendix 4 to this submission and includes among others, engineers and conductors who would be operating in the United States.

57. In performing medical assessments physicians are specifically directed to consider "substance abuse, including abuse or dependence on alcohol, prescription medications, or illicit drugs". (See Appendix 6)

58. Section 35 of the Railway Safety Act, allows the railway company to use the information provided by the physician or optometrist in the interest of safe railway operations.

59. The Canadian Medical Rules provide a regulated opportunity to periodically assess any clinical evidence of possible substance abuse.

60. The Canadian Medical Rules are more extensive than the equivalent regulation in the United States and as such deliver a component of regulatory equivalency, which supports the goals sought by FRA in this rulemaking, but exists within the legal framework/constraints faced in Canada.

61. It is of note that the Canadian Medical Rules would apply to employees of U.S. based railways operating in Canada except for the exemptions extended, as follows

2. Scope

2.1 These rules, which have been developed pursuant to Section 20 and Section 35 of the Railway Safety Act, define the Medical Fitness for Duty requirements for Safety Critical Positions within railway companies subject to the jurisdiction of the Department

2.2 In the case of international train movements, a railway company may allow persons to perform limited service in Safety Critical Positions while using medical requirements stipulated by U.S. Federal Railroad Administration regulations.

62. Appendix 5 sets out the Medical Information Sections contained in the Railway Safety Act.

63. Appendix 6 is an excerpt from the Medical Guidelines to be used by physicians. The complete Medical Rule and Medical Guidelines can be reviewed online at the Railway Association of Canada web site (www.railcan.ca).

Industry Policy

Compliance with 49 CFR part 219 as currently written

64. CPR recognizes and supports the goals sought to be achieved by 49 CFR part 219 in terms of enhancing the safety of railroad operations in the United States. CPR's U.S. based employees comply with all of 49 CFR part 219 and its Canadian based employees operating in the United States comply with those sections they are required to under the current application of 49 CFR 219 to foreign based employees.

65. A positive compliance record was a significant element of FRA decision to withdraw the 1992 ANPRM.

66. In the 1997 NAFTA report on Rail Operating Practices the LTSS, in the section dealing with drug and alcohol regulations made the following finding,

Under the current U.S. regulation, employers based outside the U.S. must have programs requiring their covered service employees, operating in the U.S., to comply with part of the 49 CFR Part 219. While in the U.S., they must comply with Parts: A-General, B-Prohibitions, C-Post Accident, and D-Testing for Cause. They are NOT required to comply with Parts: E-Identification of Troubled Employees, F-Pre –Employment, or G-Random. Review of these programs by the FRA has shown that Canadian employers are complying¹⁶

¹⁶ "Rail Operating Practices – NAFTA Report, 1997": Transport Canada/U.S. DOT/FRA, page 12-13

Pre-employment, for cause and employee assistance policies

67. CPR carries out pre – employment, pre – placement medicals, which include drug-screening tests. In addition drug screening tests are performed for reinstatement medicals where the dismissal was for substance abuse.

68. Appendix 7 sets out CPR’s policy with respect to pre-employment, pre-placement and reinstatement medicals.

69. CPR Supervisors are required to remove employees from service pending investigation when there are reasonable grounds to believe an employee has consumed, or has alcohol or a drug in their possession while subject to duty. This has been supported by arbitral jurisprudence in Canada.

70. In addition to the above policies CPR in conjunction with labour has instituted an employee and family assistance program (EFAP), which provides recourse for troubled employee situations, voluntary referral for drug and alcohol treatment and mandatory referral programs for drug and alcohol.

71. Appendix 8 sets out CPR’s “Guidelines for managing employees who present a performance problem which may be related to a medical condition: Guidelines on OHS and EFAP”.

72. Appendix 9 includes a description of CPR’s Employee and Family Assistance programs (EFAP).

73. Appendix 10 describes CPR’s Substance testing policy.¹⁷

74. Appendix 11 sets out CPR’s Drug and Alcohol policy.¹⁸

¹⁷ Appendix 10 is the final draft version of CPR’s Substance Testing policy. This policy was updated and reviewed in 2001 and replaces an existing policy on the same subject. It is expected to be in force on CPR within the next few weeks therefore this version was included.

Discussion of International Obligations/Foreign Laws

75. The NPRM is promulgated pursuant to 49 U.S.C. Section 20140, which is part of the Federal Railroad Safety Act (FRSA), 49 U.S.C. 20101, et seq. 49 U.S.C. Section 20140 is the codification of the rail related portion of the Omnibus Transportation Act .

76. 49 U.S.C. Section 20140(e) provides “In carrying out this section, the Secretary of Transportation – (1) shall establish only requirements that are consistent with the international obligations of the United States; and (2) shall consider applicable laws and regulations of foreign countries ”

77. Congress’s language with respect to establishing only requirements that are consistent with the international obligations and consideration foreign laws is mandatory.

78. CPR submits that the existing application of 49 CFR part 219 , which exempts limited aspects of Canadian based crews operating into the United States, is consistent with Congress’s mandate, having regard to the de minimus nature of its operations by Canadian based crews, the fact that CPR must comply with Canadian laws with respect to its Canadian based employees and U.S. international obligations.

Canadian Legal Issues

79. There a number of legal issues in Canada that impact on the removal of exemptions for FBFR employees. Chief among those are human rights issues resulting from the application and interpretation of the Canadian Human Right Act.¹⁹

¹⁸ Appendix 11 is the final draft version of CPR’s Alcohol and Drug policy. This policy was updated and reviewed in 2001 and replaces and existing policy on the same subject. It is expected to be in force on CPR within the next few weeks therefore this version was included.

¹⁹ R.S.C. 1985 c. H-6

Canadian Human Rights Issues

80. CPR is not opposed to use of random drug testing, but is constrained by Canadian law. Under Canadian federal law, the right of an employer to manage its business is restricted by human rights and privacy laws, even where safety and safety sensitive/critical positions are involved.

81. Decisions of the Canadian Federal Court of Appeal, Human Rights Tribunals and labour arbitrators, including cases involving Class 1 federal railways have found that there must be a balancing of safety concerns and privacy or human rights concerns. The cases have essentially found that drug and alcohol testing may be appropriate and permissible in certain circumstances where safety sensitive positions are involved.

82. Assuming the testing is done in a reasonable fashion and for a proper purpose, drug testing may be appropriate “for reasonable and probable cause”, “post accident”, on return to service or as a precondition to transfer or promotion for employees occupying safety critical or safety sensitive positions.

83. Random drug testing, however, has been found to be prima facie discriminatory and improper, even for safety sensitive positions. The rationale underlying this is that random drug testing does not test for current impairment, but only indicates that at some time in the past the individual used drugs.

84. The testing that CPR does in Canada of Canadian employees must comply with the Canadian laws and that will constrain our ability to engage in the full regime of testing that is being proposed in this Rulemaking.

85. The imposition of a random drug-testing requirement will almost certainly lead to the filing of Human Rights Complaints, as well as labour arbitration grievances. The filing and handling of such complaints is very lengthy, time consuming, costly and disruptive. The process before the Human Rights Commission and Human Rights Tribunal in any single complaint takes, in the normal course, several years and costs hundreds of thousands of dollars.

Canadian Transportation Accident Investigation and Safety Board Act

86. FRA has invited comment on whether it should expand post-accident testing to include FRFB train employees who are involved in an otherwise qualifying event while in transit to or from the United States.

87. This broad extension of 49 CFR part 219 would result in the potential for direct conflict with Canadian domestic laws and regulations.

88. For example, the Canadian Transportation Accident Investigation and Safety Board Act extends powers to its investigators which include the ability to seize, preserve and test evidence, exclude persons from accident sites and require persons to submit to medical examinations for certain purposes. Depending on how these broad powers are exercised, it may be impossible for a Canadian railway to provide samples required by extension of 49 CFR 219 to FRFB train employees who are involved in a qualifying event while in transit to or from the United States.

89. Excerpts from the Canadian Transportation Accident Investigation and Safety Board Act are appended at Appendix 11.

Provincial Coroners Legislation

90. A second example of potential conflict involves the constitutional division of powers between the Canadian federal government and the Canadian provincial governments. In Canada the Provinces have exclusive legal jurisdiction over

Coroners who investigate fatalities. While each Province's legislation will differ they all share the power to take charge of wreckage and to seize dead bodies for the purpose of post mortem examinations.

91. As was the case with the federal TSB legislation the provincial powers given to a coroner may prevent a Canadian railway from providing samples required by 49 CFR 219 for FRFB train employees who are involved in an otherwise qualifying event while in transit to or from the United States.

92. Excerpts from the Ontario Coroners Act²⁰ are attached at Appendix 12.

93. The two examples (and there are more) highlight the practical and legal difficulties in the unilateral extension of 49 CFR 219 to include testing outside of the United States.

94. CPR submits that resolving issues like this will require international cooperation and treaties/conventions that would be most likely to be achieved through vehicles such as LTSS or directly between the Governments of the United States and Canada.

International Obligations

95. Canadian legal barriers to the complete adoption of 49 CFR part 219 ties into Congress's mandate to establish only requirements that are consistent with the international obligations of the United States.

96. The international obligations of the United States, relevant to this issue, are primarily found in the North American Free Trade Agreement.

²⁰ R.S.O. 1990, c. C-37

97. One of NAFTA's primary objectives, as stated in Article 102 (Objectives), is to "facilitate the cross border movement of goods and services between the territories of the parties."

98. Pursuant to Article 906 (Compatibility and Equivalence), the parties, "without reducing the level of safety...shall, to the greatest extent possible, make compatible their respective standards-related measures, so as to facilitate trade in a good or service between the Parties."

99. Recent NAFTA/WTO decisions makes it clear that, even for safety reasons, it is inconsistent with NAFTA to absolutely require, as a precondition of entry into the host country, that the regulatory systems in two NAFTA countries be substantially identical,

Similarly, the Panel is mindful that a broad interpretation of the "in like circumstances" language could render Articles 1202 and 1203 meaningless. If, for example, the regulatory systems in two NAFTA countries must be substantially identical before national treatment is granted, relatively few service industry providers could ultimately qualify. Accordingly, the Panel concludes that the U.S. position that the "in like circumstances" language permits continuation of the moratorium on accepting applications for operating authority in the United States from Mexican owned and domiciled carriers is an overly-broad reading of that clause.²¹

100. Article 907 (Risk Assessment) suggests that the parties, in establishing levels of protection, "may" conduct an assessment of risk. Among the things such a Risk Assessment is designed to prevent is the "arbitrary or unjustifiable discrimination against...service providers of another party."

101. To the best of our knowledge, no such assessment was conducted in this instance.

102. There is a positive obligation for the United States as a NAFTA trading partner to find the least trade – restrictive measure in the extraterritorial extension of

²¹ NAFTA, ARBITRAL PANEL ESTABLISHED PURSUANT TO CHAPTER TWENTY IN THE MATTER OF CROSS-BORDER TRUCKING SERVICES,(Secretariat File No. USA-MEX-98-2008-01)Final Report of the Panel February 6, 2001 page 69

its drug and alcohol regulations. This type of issue arose in the Mexican Trucking arbitration where the panel noted,

This suggests, by analogy, that the United States did not, in the actions it took prior to December 17, 1995, make a sufficient effort to find a less trade-restrictive measure than continuation of the moratorium to address its safety concerns.²²

103. Article 908 (Conformity Assessment) requires the parties to “make compatible [their conformity assessment] procedure to the greatest extent possible” and, with respect to such procedures, to “not adopt or maintain any such procedure that is stricter, nor apply the procedure more strictly, than necessary to give it confidence that a good or service conforms with an applicable technical regulation or standard...”

104. It is unknown whether any conformity assessment was conducted in connection with this rulemaking.

105. In the NAFTA Cross Border Trucking arbitration the Panel found the following,

...in this NAFTA case, the United States failed to demonstrate that there are no alternative means of achieving U.S. safety goals that are more consistent with NAFTA requirements than the moratorium.²³

106. CPR submits that an absolute imposition of 49 CFR part 219 as is contemplated would be contrary to NAFTA principles as there has been no investigation of alternative means of achieving U.S. safety goals that are more consistent with NAFTA requirements or that based on a specific bona fide risk assessment that the NPRM is necessary.

107. Article 913 (Committee on Standards-Related Measures) establishes a Committee on Standards-Related Measures and requires that Committee to establish

²² Ibid, page 71

²³ Ibid page 72,

various subcommittees, including the Land Transportation Standards Subcommittee. That Subcommittee, the duties of which are described at Annex 913.5.a-1, was required to implement “a work program for making compatible the parties’ relevant standards-related measures for...rail operations.”

108. June 1998, in a joint statement of accomplishments presented in Montreal, the LTSS issued a statement regarding Rail Safety noting the “completion of a comprehensive analysis of regulations affecting rail safety in the three countries. Through this work it has been determined that the regulatory differences will not significantly affect the safety of rail operations in cross-border service.” Given the Subcommittee’s statement, the need for the Proposed Rules is called into question.

109. CPR submits that at a minimum the proposed rulemaking should involve the Subcommittee in order to ensure compliance with 49 U.S.C. 20140(e)(1)

110. CPR submits that regulatory differences are best resolved through the LTSS or as between representatives of the Governments of the United States and Canada, not between FRA and Foreign railways, given the potential trade implications and potential inconsistency with foreign laws.

Conclusions

111. The factors present in 1994, namely limited distance, limited operations, limited risk and regulatory equivalency, which permitted the safe withdrawal of the ANPRM in 1994, exist today. Significant advances in Canadian transportation regulation and the responsible adoption of drug and alcohol policies by Canadian railways have improved on the positive situation identified by FRA in 1994.

112. When the divergent approaches with respect to employees of foreign companies operating in the United States taken by FAA and FMCSA are reviewed

and consideration is given as to the appropriate model for FBFR employees, rail more closely resembles aeronautics and is quite distinguishable from trucking.

113. There are significant practical and legal barriers in Canadian laws and regulations, which would put CPR squarely between compliance with Canadian law and that of 49 CFR part 219. This would have a direct impact on international trade, as conceivably Canadian crews would be prevented from operating in the United States.

114. It is not difficult to imagine that if Canadian crews were prevented from entering the United States because of the inability to comply with 49 CFR part 219 interchange of all international traffic would have to occur in Canada. This would have direct adverse cost consequence for both U.S. and Canadian based rail carriers and shippers.

115. It is not feasible to exchange all traffic on the Canadian side of the border due to existing capacity and infrastructure constraints.

116. When the International obligations of the United States under trade agreements such as NAFTA are analyzed there are a number of international law barriers to the further extension of 49 CFR part 219 as contemplated by the NPRM.

117. Having regard to the limited distances, limited operations, limited risks, regulatory equivalency, modal comparisons, conflicts with Canadian law and International law implications, CPR submits that the exemption for FBFR employees should be continued.

118. If there is a bona fide and compelling reason supported by a valid risk assessments to extend 49 CFR part 219 to FBFR employees, it should be negotiated directly by the Governments of the United States and Canada rather than between FRA and Canadian railroads in a rulemaking process.

Submitted the _____ day of February, 2002

Canadian Pacific Railway

Appendix 1

Drug Alcohol Cost/Benefits

Drug Alcohol Reg Benefits

08-Feb-02

Part 1: Calculation of Train Mile Exposure in the U.S. from Trains Operated by Canadian Crews

Railroad	Trains per Day	Trains per Year	Train Miles in the US	Miles per Train	Data Source
CN	39	14,040	327,000	23.3	CN
CP	27	9,720	57,000	5.9	CP
VIA	1	360	4,000	11.1	CP
Other Cdn. (Note # 1)	?				
Total	67	24,120	388,000	16.1	
FRA Total (Note # 2)	83	30,337			RIA, p. 1

Est. Train Miles/Yr. over 20 years: 0.4 Million

Part 2: Calculation of Drug & Alcohol Caused Train Accident Rate (Cause H101)

Version 1: FRA Unedited: January 1985 to December 1998 for All US Railroads: RIA, p. 39

Accidents	31	
Fatalities	0	
Injuries	20	
Damage	\$6,859,456	
Train Miles (Millions)	8,698	FRA
Years	14	

Accidents per MTM per Year:	0.003564
Fatalities per Accident:	0.005
Injuries per Accident:	0.645
Damage per Accident:	\$221,273

Part 3: Estimate of Annual Drug & Alcohol Accidents & Costs in Cross Border Operations from Canada

Version 1: Using FRA Unedited: January 1985 to December 1998 for All US Railroads:

	Per Year	Unit Cost	Per Year Total Cost		
Accidents	0.0014256				
Fatalities	0.0000072	\$2,700,000	\$19.46		
Injuries (Note # 3)	0.0009197	\$155,250	\$142.79		
Damage (Note # 4)	\$315.45	1.5	\$473.17		
Total per Year			\$635.42	B/C Ratio	C/B Ratio
20-Year Present Value of Total:			\$6,732	0.03	37.2

20-Year NPV Multiplied by 10:	(Note # 5	\$67,317	0.27	3.7
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20-Year Present Value of Costs in RIA	\$250,384
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- Note # 1** There may be a small number of cross border moves by other Canadian short lines.
- Note # 2** Total trains used by FRA would include trains with U.S. crews returning from Canada.
- Note # 3** Assumes the AVERAGE Injury is AIS 3 "Serious".
- Note # 4** Additional 50% factored in to account for non-reported damages (lading, wrecking etc.)
- Note # 5** Factor of 10 added to account for possible under reporting in the U.S. rates in Part 2
and for possible differences in Canadian drug & alcohol usage rates alleged by FRA.

Appendix 2

Excerpts from the Criminal Code

"railway equipment" "railway equipment" means
«matériel ferroviaire»

(a) any machine that is constructed for movement exclusively on lines of railway, whether or not the machine is capable of independent motion, or

(b) any vehicle that is constructed for movement both on and off lines of railway while the adaptations of that vehicle for movement on lines of railway are in use;

"operate" «conduire» "operate"

(a) means, in respect of a motor vehicle, to drive the vehicle,

(b) means, in respect of railway equipment, to participate in the direct control of its motion, whether

(i) as a member of the crew of the equipment,

(ii) as a person who, by remote control, acts in lieu of such crew, or

(iii) as other than a member or person described in subparagraphs (i) and (ii), and

(c) includes, in respect of a vessel or an aircraft, to navigate the vessel or aircraft;

Interfering with
transportation
facilities

248. Every one who, with intent to endanger the safety of any person, places anything on or does anything to any property that is used for or in connection with the transportation of persons or goods by land, water or air that is likely to cause death or bodily harm to persons is guilty of an indictable offence and liable to imprisonment for life.

Motor Vehicles, Vessels and Aircraft

Dangerous operation of motor vehicles,
vessels and aircraft

249. (1) Every one commits an offence who operates
(a) a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at

the time is or might reasonably be expected to be at that place;

(b) a vessel or any water skis, surf-board, water sled or other towed object on or over any of the internal waters of Canada or the territorial sea of Canada, in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of those waters or sea and the use that at the time is or might reasonably be expected to be made of those waters or sea;

(c) an aircraft in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of that aircraft or the place or air space in or through which the aircraft is operated; or

(d) railway equipment in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of the equipment or the place in or through which the equipment is operated.

Punishment

(2) Every one who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction.

Dangerous operation causing bodily harm

(3) Every one who commits an offence under subsection (1) and thereby causes bodily harm to any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Dangerous operation causing death

(4) Every one who commits an offence under subsection (1) and thereby causes the death of any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., 1985, c. C-46, s. 249; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 32 (4th Supp.), s. 57; 1994, c. 44, s. 11.

**Unseaworthy vessel
and unsafe aircraft**

251. (1) Every one who knowingly

(a) sends or being the master takes a vessel that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament and that is unseaworthy

(i) on a voyage from a place in Canada to any other place in or out of Canada, or

(ii) on a voyage from a place on the inland waters of the United States to a place in Canada,

(b) sends an aircraft on a flight or operates an aircraft that is not fit and safe for flight, or

(c) sends for operation or operates railway equipment that is not fit and safe for

operation

and thereby endangers the life of any person, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Defences

(2) An accused shall not be convicted of an offence under this section where the accused establishes that,

(a) in the case of an offence under paragraph (1)(a),

(i) the accused used all reasonable means to ensure that the vessel was seaworthy, or

(ii) to send or take the vessel while it was unseaworthy was, under the circumstances, reasonable and justifiable;

(b) in the case of an offence under paragraph (1)(b),

(i) the accused used all reasonable means to ensure that the aircraft was fit and safe for flight, or

(ii) to send or operate the aircraft while it was not fit and safe for flight was, under the circumstances, reasonable and justifiable; and

(c) in the case of an offence under paragraph (1)(c),

(i) the accused used all reasonable means to ensure that the railway equipment was fit and safe for operation, or

(ii) to send the railway equipment for operation or to operate it while it was not fit and safe for operation was, under the circumstances, reasonable and justifiable.

Consent of Attorney
General

(3) No proceedings shall be instituted under this section in respect of a vessel or aircraft, or in respect of railway equipment sent for operation or operated on a line of railway that is within the legislative authority of Parliament, without the consent in writing of the Attorney General of Canada.

R.S., 1985, c. C-46, s. 251; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 32 (4th Supp.), s. 58.

Operation while
impaired

253. Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,

(a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or

(b) having consumed alcohol in such a quantity that the concentration in the

person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.

R.S., 1985, c. C-46, s. 253; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 32 (4th Supp.), s. 59.

Definitions

254. (1) In this section and sections 255 to 258,

"analyst" «*analyste*» "analyst" means a person designated by the Attorney General as an analyst for the purposes of section 258;

"approved container" «*contenant approuvé*» "approved container" means

(a) in respect of breath samples, a container of a kind that is designed to receive a sample of the breath of a person for analysis and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada, and

(b) in respect of blood samples, a container of a kind that is designed to receive a sample of the blood of a person for analysis and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada;

"approved instrument" «*alcooltest approuvé*» "approved instrument" means an instrument of a kind that is designed to receive and make an analysis of a sample of the breath of a person in order to measure the concentration of alcohol in the blood of that person and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada;

"approved screening device" «*appareil de détection approuvé*» "approved screening device" means a device of a kind that is designed to ascertain the presence of alcohol in the blood of a person and that is approved for the purposes of this section by order of the Attorney General of Canada;

"qualified medical practitioner" «*médecin qualifié*» "qualified medical practitioner" means a person duly qualified by provincial law to practise medicine;

"qualified technician" «*technicien qualifié*» "qualified technician" means,

(a) in respect of breath samples, a person designated by the Attorney General as being qualified to operate an approved instrument, and

(b) in respect of blood samples, any person or person of a class of persons designated by the Attorney General as being qualified to take samples of blood for the purposes of this section and sections 256 and 258.

Testing for presence of alcohol in the blood

(2) Where a peace officer reasonably suspects that a person who is operating a motor vehicle or vessel or operating or assisting in the operation of an aircraft or of railway equipment or who has the care or control of a motor vehicle, vessel or aircraft or of railway equipment, whether it is in motion or not, has alcohol in the person's body, the peace officer may, by demand made to that person, require the person to provide forthwith such a sample of breath as in the opinion of the peace officer is necessary to enable a proper analysis of the breath to be made by means of an approved screening device and, where necessary, to accompany the peace

officer for the purpose of enabling such a sample of breath to be taken.

Samples of breath or blood where reasonable belief of commission of offence

(3) Where a peace officer believes on reasonable and probable grounds that a person is committing, or at any time within the preceding three hours has committed, as a result of the consumption of alcohol, an offence under section 253, the peace officer may, by demand made to that person forthwith or as soon as practicable, require that person to provide then or as soon thereafter as is practicable

(a) such samples of the person's breath as in the opinion of a qualified technician, or

(b) where the peace officer has reasonable and probable grounds to believe that, by reason of any physical condition of the person,

(i) the person may be incapable of providing a sample of his breath, or

(ii) it would be impracticable to obtain a sample of the person's breath,

such samples of the person's blood, under the conditions referred to in subsection (4), as in the opinion of the qualified medical practitioner or qualified technician taking the samples

are necessary to enable proper analysis to be made in order to determine the concentration, if any, of alcohol in the person's blood, and to accompany the peace officer for the purpose of enabling such samples to be taken.

Exception

(4) Samples of blood may only be taken from a person pursuant to a demand made by a peace officer under subsection (3) if the samples are taken by or under the direction of a qualified medical practitioner and the qualified medical practitioner is satisfied that the taking of those samples would not endanger the life or health of the person.

Failure or refusal to provide sample

(5) Every one commits an offence who, without reasonable excuse, fails or refuses to comply with a demand made to him by a peace officer under this section.

Only one conviction for failure to comply with demand

(6) A person who is convicted of an offence committed under subsection (5) for a failure or refusal to comply with a demand made under subsection (2) or paragraph (3)(a) or (b) in respect of any transaction may not be convicted of another offence committed under subsection (5) in respect of the same transaction.

R.S., 1985, c. C-46, s. 254; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 1 (4th Supp.), ss. 14, 18(F), c. 32 (4th Supp.), s. 60; 1999, c. 32, s. 2(Preamble).

Punishment

255. (1) Every one who commits an offence under section 253 or 254 is guilty of an indictable offence or an offence punishable on summary conviction and is liable,

(a) whether the offence is prosecuted by indictment or punishable on summary conviction, to the following minimum punishment, namely,

- (i) for a first offence, to a fine of not less than six hundred dollars,
- (ii) for a second offence, to imprisonment for not less than fourteen days, and
- (iii) for each subsequent offence, to imprisonment for not less than ninety days;

(b) where the offence is prosecuted by indictment, to imprisonment for a term not exceeding five years; and

(c) where the offence is punishable on summary conviction, to imprisonment for a term not exceeding six months.

Impaired driving
causing bodily harm

(2) Every one who commits an offence under paragraph 253(a) and thereby causes bodily harm to any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Impaired driving
causing death

(3) Every one who commits an offence under paragraph 253(a) and thereby causes the death of any other person is guilty of an indictable offence and liable to imprisonment for life.

Previous convictions

(4) Where a person is convicted of an offence committed under paragraph 253(a) or (b) or subsection 254(5), that person shall, for the purposes of this Act, be deemed to be convicted for a second or subsequent offence, as the case may be, if the person has previously been convicted of

(a) an offence committed under any of those provisions;

(b) an offence under subsection (2) or (3); or

(c) an offence under section 250, 251, 252, 253, 259 or 260 or subsection 258(4) of this Act as this Act read immediately before the coming into force of this subsection.

R.S., 1985, c. C-46, s. 255; R.S., 1985, c. 27 (1st Supp.), s. 36; 1999, c. 32, s. 3(Preamble); 2000, c. 25, s. 2.

Aggravating
circumstances for
sentencing purposes

255.1 Without limiting the generality of section 718.2, where a court imposes a sentence for an offence committed under this Act by means of a motor vehicle, vessel or aircraft or of railway equipment, evidence that the concentration of alcohol in the blood of the offender at the time when the offence was committed exceeded one hundred and sixty milligrams of alcohol in one hundred millilitres of blood shall be deemed to be aggravating circumstances relating to the offence that the court shall consider under paragraph 718.2(a).

1999, c. 32, s. 4(Preamble).

Warrants to obtain
blood samples

256. (1) Subject to subsection (2), if a justice is satisfied, on an information on oath in Form 1 or on an information on oath submitted to the justice under section 487.1 by telephone or other means of telecommunication, that there are reasonable grounds to believe that

(a) a person has, within the preceding four hours, committed, as a result of the consumption of alcohol or a drug, an offence under section 253 and the person was involved in an accident resulting in the death of another person or in bodily harm to himself or herself or to any other person, and

(b) a qualified medical practitioner is of the opinion that

(i) by reason of any physical or mental condition of the person that resulted from the consumption of alcohol or a drug, the accident or any other occurrence related to or resulting from the accident, the person is unable to consent to the taking of samples of his or her blood, and

(ii) the taking of samples of blood from the person would not endanger the life or health of the person,

the justice may issue a warrant authorizing a peace officer to require a qualified medical practitioner to take, or to cause to be taken by a qualified technician under the direction of the qualified medical practitioner, the samples of the blood of the person that in the opinion of the person taking the samples are necessary to enable a proper analysis to be made in order to determine the concentration, if any, of alcohol or drugs in the person's blood.

Form (2) A warrant issued pursuant to subsection (1) may be in Form 5 or 5.1 varied to suit the case.

Information on oath (3) Notwithstanding paragraphs 487.1(4)(b) and (c), an information on oath submitted by telephone or other means of telecommunication for the purposes of this section shall include, instead of the statements referred to in those paragraphs, a statement setting out the offence alleged to have been committed and identifying the person from whom blood samples are to be taken.

Duration of warrant (4) Samples of blood may be taken from a person pursuant to a warrant issued pursuant to subsection (1) only during such time as a qualified medical practitioner is satisfied that the conditions referred to in subparagraphs (1)(b)(i) and (ii) continue to exist in respect of that person.

Facsimile to person (5) Where a warrant issued pursuant to subsection (1) is executed, the peace officer shall, as soon as practicable thereafter, give a copy or, in the case of a warrant issued by telephone or other means of telecommunication, a facsimile of the warrant to the person from whom the blood samples were taken.

R.S., 1985, c. C-46, s. 256; R.S., 1985, c. 27 (1st Supp.), s. 36; 1992, c. 1, s. 58; 1994, c. 44, s. 13; 2000, c. 25, s. 3.

No offence
committed

257. (1) No qualified medical practitioner or qualified technician is guilty of an offence only by reason of his refusal to take a sample of blood from a person for the purposes of section 254 or 256 and no qualified medical practitioner is guilty of an offence only by reason of his refusal to cause to be taken by a qualified technician under his direction a sample of blood from a person for those purposes.

No criminal or civil
liability

(2) No qualified medical practitioner by whom or under whose direction a sample of blood is taken from a person pursuant to a demand made under subsection 254(3) or a warrant issued under section 256 and no qualified technician acting under the direction of a qualified medical practitioner incurs any

criminal or civil liability for anything necessarily done with reasonable care and skill in the taking of such a sample of blood.

R.S., 1985, c. C-46, s. 257; R.S., 1985, c. 27 (1st Supp.), s. 36.

Proceedings under
section 255

258. (1) In any proceedings under subsection 255(1) in respect of an offence committed under section 253 or in any proceedings under subsection 255(2) or (3),

(a) where it is proved that the accused occupied the seat or position ordinarily occupied by a person who operates a motor vehicle, vessel or aircraft or any railway equipment or who assists in the operation of an aircraft or of railway equipment, the accused shall be deemed to have had the care or control of the vehicle, vessel, aircraft or railway equipment, as the case may be, unless the accused establishes that the accused did not occupy that seat or position for the purpose of setting the vehicle, vessel, aircraft or railway equipment in motion or assisting in the operation of the aircraft or railway equipment, as the case may be;

(b) the result of an analysis of a sample of the breath or blood of the accused (other than a sample taken pursuant to a demand made under subsection 254(3)) or of the urine or other bodily substance of the accused may be admitted in evidence notwithstanding that, before the accused gave the sample, he was not warned that he need not give the sample or that the result of the analysis of the sample might be used in evidence;

(c) where samples of the breath of the accused have been taken pursuant to a demand made under subsection 254(3), if

(i) [Not in force]

(ii) each sample was taken as soon as practicable after the time when the offence was alleged to have been committed and, in the case of the first sample, not later than two hours after that time, with an interval of at least fifteen minutes between the times when the samples were taken,

(iii) each sample was received from the accused directly into an approved container or into an approved instrument operated by a qualified technician, and

(iv) an analysis of each sample was made by means of an approved instrument operated by a qualified technician,

evidence of the results of the analyses so made is, in the absence of evidence to the contrary, proof that the concentration of alcohol in the blood of the accused at the time when the offence was alleged to have been committed was, where the results of the analyses are the same, the concentration determined by the analyses and, where the results of the analyses are different, the lowest of the concentrations determined by the analyses;

(d) where a sample of the blood of the accused has been taken pursuant to a demand made under subsection 254(3) or otherwise with the consent of the accused or pursuant to a warrant issued under section 256, if

(i) at the time the sample was taken, the person taking the sample took an additional sample of the blood of the accused and one of the samples was retained, to permit an analysis thereof to be made by or on behalf of the accused and, in the case where the accused makes a request within six months from the taking of the samples, one of the samples was ordered to be released pursuant to subsection (4),

(ii) both samples referred to in subparagraph (i) were taken as soon as practicable after the time when the offence was alleged to have been committed and in any event not later than two hours after that time,

(iii) both samples referred to in subparagraph (i) were taken by a qualified medical practitioner or a qualified technician under the direction of a qualified medical practitioner,

(iv) both samples referred to in subparagraph (i) were received from the accused directly into, or placed directly into, approved containers that were subsequently sealed, and

(v) an analysis was made by an analyst of at least one of the samples that was contained in a sealed approved container,

evidence of the result of the analysis is, in the absence of evidence to the contrary, proof that the concentration of alcohol in the blood of the accused at the time when the offence was alleged to have been committed was the concentration determined by the analysis or, where more than one sample was analyzed and the results of the analyses are the same, the concentration determined by the analyses and, where the results of the analyses are different, the lowest of the concentrations determined by the analyses;

(d.1) where samples of the breath of the accused or a sample of the blood of the accused have been taken as described in paragraph (c) or (d) under the conditions described therein and the results of the analyses show a concentration of alcohol in blood exceeding eighty milligrams of alcohol in one hundred millilitres of blood, evidence of the result of the analyses is, in the absence of evidence tending to show that the concentration of alcohol in the blood of the accused at the time when the offence was alleged to have been committed did not exceed eighty milligrams of alcohol in one hundred millilitres of blood, proof that the concentration of alcohol in the blood of the accused at the time when the offence was alleged to have been committed exceeded eighty milligrams of alcohol in one hundred millilitres of blood;

(e) a certificate of an analyst stating that the analyst has made an analysis of a sample of the blood, urine, breath or other bodily substance of the accused and stating the result of that analysis is evidence of the facts alleged in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate;

(f) a certificate of an analyst stating that the analyst has made an analysis of a sample of an alcohol standard that is identified in the certificate and intended for use with an approved instrument and that the sample of the standard analyzed by the analyst was found to be suitable for use with an approved instrument, is evidence that the alcohol standard so identified is suitable for use with an approved instrument without proof of the signature or the official

character of the person appearing to have signed the certificate;

(g) where samples of the breath of the accused have been taken pursuant to a demand made under subsection 254(3), a certificate of a qualified technician stating

(i) that the analysis of each of the samples has been made by means of an approved instrument operated by the technician and ascertained by the technician to be in proper working order by means of an alcohol standard, identified in the certificate, that is suitable for use with an approved instrument,

(ii) the results of the analyses so made, and

(iii) if the samples were taken by the technician,

(A) [Not in force]

(B) the time when and place where each sample and any specimen described in clause (A) was taken, and

(C) that each sample was received from the accused directly into an approved container or into an approved instrument operated by the technician,

is evidence of the facts alleged in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate;

(h) where a sample of the blood of the accused has been taken pursuant to a demand made under subsection 254(3) or otherwise with the consent of the accused or pursuant to a warrant issued under section 256,

(i) a certificate of a qualified medical practitioner stating that

(A) the medical practitioner took the sample and that before the sample was taken he was of the opinion that the taking of blood samples from the accused would not endanger the life or health of the accused and, in the case of a demand made pursuant to a warrant issued pursuant to section 256, that by reason of any physical or mental condition of the accused that resulted from the consumption of alcohol, the accident or any other occurrence related to or resulting from the accident, the accused was unable to consent to the taking of his blood,

(B) at the time the sample was taken, an additional sample of the blood of the accused was taken to permit analysis of one of the samples to be made by or on behalf of the accused,

(C) the time when and place where both samples referred to in clause (B) were taken, and

(D) both samples referred to in clause (B) were received from the accused directly into, or placed directly into, approved containers that were subsequently sealed and that are identified in the certificate,

(ii) a certificate of a qualified medical practitioner stating that the medical practitioner caused the sample to be taken by a qualified technician under his direction and that before the sample was taken the qualified medical practitioner was of the opinion referred to in clause (i)(A), or

(iii) a certificate of a qualified technician stating that the technician took the sample and the facts referred to in clauses (i)(B) to (D)

is evidence of the facts alleged in the certificate without proof of the signature or official character of the person appearing to have signed the certificate; and

(i) a certificate of an analyst stating that the analyst has made an analysis of a sample of the blood of the accused that was contained in a sealed approved container identified in the certificate, the date on which and place where the sample was analyzed and the result of that analysis is evidence of the facts alleged in the certificate without proof of the signature or official character of the person appearing to have signed it.

No obligation to give sample except as required under section 254

(2) No person is required to give a sample of urine or other bodily substance for analysis for the purposes of this section except breath or blood as required under section 254, and evidence that a person failed or refused to give such a sample or that such a sample was not taken is not admissible nor shall such a failure or refusal or the fact that a sample was not taken be the subject of comment by any person in the proceedings.

Evidence of failure to comply with demand

(3) In any proceedings under subsection 255(1) in respect of an offence committed under paragraph 253(a) or in any proceedings under subsection 255(2) or (3), evidence that the accused, without reasonable excuse, failed or refused to comply with a demand made to him by a peace officer under section 254 is admissible and the court may draw an inference therefrom adverse to the accused.

Release of specimen for testing

(4) A judge of a superior court of criminal jurisdiction or a court of criminal jurisdiction shall, on the summary application of the accused made within six months from the day on which samples of the blood of the accused were taken, order the release of one of the samples for the purpose of an examination or analysis thereof, subject to such terms as appear to be necessary or desirable to ensure the safeguarding of the sample and its preservation for use in any proceedings in respect of which it was retained.

Testing blood for presence of drugs

(5) Where a sample of blood of an accused has been taken pursuant to a demand made under subsection 254(3) or otherwise with the consent of the accused or pursuant to a warrant issued under section 256, the sample may be tested for the presence of drugs in the blood of the accused.

Attendance and right to cross-examine

(6) A party against whom a certificate described in paragraph (1)(e), (f), (g), (h) or (i) is produced may, with leave of the court, require the attendance of the qualified medical practitioner, analyst or qualified technician, as the case may be, for the purposes of cross-examination.

Notice of intention to produce certificate

(7) No certificate shall be received in evidence pursuant to paragraph (1)(e), (f), (g), (h) or (i) unless the party intending to produce it has, before the trial, given to the other party reasonable notice of his intention and a copy of the certificate.

R.S.. 1985. c. C-46. s. 258; R.S.. 1985. c. 27 (1st Supp.). s. 36. c. 32 (4th Supp.).

s. 61; 1992, c. 1, s. 60(F); 1994, c. 44, s. 14(E); 1997, c. 18, s. 10.

Mandatory order of prohibition

259. (1) When an offender is convicted of an offence committed under section 253 or 254 or discharged under section 730 of an offence committed under section 253 and, at the time the offence was committed or, in the case of an offence committed under section 254, within the three hours preceding that time, was operating or had the care or control of a motor vehicle, vessel or aircraft or of railway equipment or was assisting in the operation of an aircraft or of railway equipment, the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place, or from operating a vessel or an aircraft or railway equipment, as the case may be,

(a) for a first offence, during a period of not more than three years plus any period to which the offender is sentenced to imprisonment, and not less than one year;

(b) for a second offence, during a period of not more than five years plus any period to which the offender is sentenced to imprisonment, and not less than two years; and

(c) for each subsequent offence, during a period of not less than three years plus any period to which the offender is sentenced to imprisonment.

Exception where
Alcohol Ignition
Interlock Program

(1.1) Notwithstanding paragraph (1)(a), where the lieutenant governor in council of the province in which the prohibition order under paragraph (1)(a) is to be made has established a program governing the use of an alcohol ignition interlock device by an offender convicted of an offence for which the order is to be made, the minimum period of not less than one year is reduced to a period of not less than three months, if the offender participates in the program during the remainder of the one year period.

Discretionary order of prohibition

(2) Where an offender is convicted or discharged under section 730 of an offence under section 220, 221, 236, 249, 249.1, 250, 251 or 252, subsection 255(2) or (3) or this section committed by means of a motor vehicle, vessel or aircraft or of railway equipment, the court that sentences the offender may, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place, or from operating a vessel, an aircraft or railway equipment, as the case may be

(a) during any period that the court considers proper, if the offender is liable to imprisonment for life in respect of that offence;

(b) during any period not exceeding ten years plus any period to which the offender is sentenced to imprisonment, if the offender is liable to imprisonment for more than five years but less than life in respect of that offence; and

(c) during any period not exceeding three years plus any period to which the offender is sentenced to imprisonment, in any other case.

Saving

(3) No order made under subsection (1) or (2) shall operate to prevent any person from acting as master, mate or engineer of a vessel that is required to carry

officers holding certificates as master, mate or engineer.

Operation while
disqualified

(4) Every one who operates a motor vehicle, vessel or aircraft or any railway equipment in Canada while disqualified from doing so

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction.

Definition of
"disqualification"

(5) For the purposes of this section, "disqualification" means

(a) a prohibition from operating a motor vehicle, vessel or aircraft or any railway equipment ordered pursuant to subsection (1) or (2); or

(b) a disqualification or any other form of legal restriction of the right or privilege to operate a motor vehicle, vessel or aircraft imposed

(i) in the case of a motor vehicle, under the law of a province, or

(ii) in the case of a vessel or an aircraft, under an Act of Parliament,

in respect of a conviction or discharge under section 730 of any offence referred to in subsection (1) or (2).

R.S., 1985, c. C-46, s. 259; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 1 (4th Supp.), s. 18(F), c. 32 (4th Supp.), s. 62; 1995, c. 22, ss. 10, 18; 1997, c. 18, s. 11; 1999, c. 32, s. 5(Preamble); 2000, c. 2, s. 2.

Proceedings on
making of prohibition
order

260. (1) Where a court makes a prohibition order under subsection 259(1) or (2) in relation to an offender, it shall cause

(a) the order to be read by or to the offender;

(b) a copy of the order to be given to the offender; and

(c) the offender to be informed of subsection 259(4).

Endorsement by
offender

(2) After subsection (1) has been complied with in relation to an offender who is bound by an order referred to in that subsection, the offender shall endorse the order, acknowledging receipt of a copy thereof and that the order has been explained to him.

Validity of order not
affected

(3) The failure of an offender to endorse an order pursuant to subsection (2) does not affect the validity of the order.

Onus

(4) In the absence of evidence to the contrary, where it is proved that a disqualification referred to in paragraph 259(5)(b) has been imposed on a person and that notice of the disqualification has been mailed by registered or certified mail to that person, that person shall, after five days following the mailing of the notice, be deemed to have received the notice and to have knowledge of the disqualification, of the date of its commencement and of its duration.

Certificate admissible in evidence (5) In proceedings under section 259, a certificate setting out with reasonable particularity that a person is disqualified from

(a) driving a motor vehicle in a province, purporting to be signed by the registrar of motor vehicles for that province, or

(b) operating a vessel or aircraft, purporting to be signed by the Minister of Transport or any person authorized by the Minister of Transport for that purpose

is evidence of the facts alleged therein without proof of the signature or official character of the person by whom it purports to be signed.

Notice to accused (6) Subsection (5) does not apply in any proceedings unless at least seven days notice in writing is given to the accused that it is intended to tender the certificate in evidence.

Definition of "registrar of motor vehicles" (7) In subsection (5), "registrar of motor vehicles" includes the deputy of that registrar and any other person or body, by whatever name or title designated, that from time to time performs the duties of superintending the registration of motor vehicles in the province.

R.S., 1985, c. C-46, s. 260; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 1 (4th Supp.), s. 18(F).

Stay of order pending appeal 261. (1) Where an appeal is taken against a conviction or discharge under section 730 for an offence committed under any of sections 220, 221, 236, 249 to 255 and 259, a judge of the court being appealed to may direct that any order under subsection 259(1) or (2) arising out of the conviction or discharge shall, on such conditions as the judge or court may impose, be stayed pending the final disposition of the appeal or until otherwise ordered by that court.

Effect of conditions (2) Where conditions are imposed pursuant to a direction made under subsection (1) that a prohibition order under subsection 259(1) or (2) be stayed, the direction shall not operate to decrease the period of prohibition provided in the order made under subsection 259(1) or (2).

R.S., 1985, c. C-46, s. 261; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 1 (4th Supp.), s. 18(F); 1994, c. 44, ss. 15, 103; 1995, c. 22, s. 10; 1997, c. 18, ss. 12, 141.

Appendix 3

Railway Safety Act - Offences

Offences

Contravention of provision of Act

- 41. (1)** Every person who contravenes a provision of this Act is guilty of an offence and liable
- (a) on conviction on indictment,
 - (i) in the case of a corporation, to a fine not exceeding two hundred thousand dollars, and
 - (ii) in the case of an individual, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year, or to both; or
 - (b) on summary conviction,
 - (i) in the case of a corporation, to a fine not exceeding one hundred thousand dollars, and
 - (ii) in the case of an individual, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months, or to both.

Contravention of regulations, orders, etc.

- (2) A person is guilty of an offence if the person contravenes
- (a) a regulation made under subsection 7(1) or section 7.1, 18, 24, 37, 47 or 47.1;
 - (b) an order made by the Minister or a railway safety inspector under subsection 7(2) or 19(1) or section 31 or 32;
 - (c) a requirement made by the Agency under subsection 16(3) or 26(3);
 - (d) a rule in force under section 19 or 20;
 - (e) an emergency directive made by the Minister under section 33; or
 - (f) a requirement under subsection 39.1(2) to carry out a security measure.

Punishment

- (2.1) A person who is guilty of an offence under subsection (2) is liable on summary conviction
- (a) in the case of a corporation, to a fine of not more than \$100,000; and
 - (b) in the case of an individual, to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

Continuing offences

- (3) If a person commits a contravention described in subsection (1) or (2) that occurs on more than one day, or is continued for more than one day, the person is deemed to have committed a separate offence for each day on which it occurs or is continued.

Venue

- (3.1) Any complaint or information in respect of an offence under this Act may be heard, tried or determined by a court if the accused is resident or carrying on business within the territorial jurisdiction of that court although the matter of the complaint or information did not arise in that territorial jurisdiction.

Joinder of complaints

- (3.2) The judge who hears, tries or determines the complaint or information may, at the request of the accused, join it with others of the same type against the accused, even if the matter of the complaints or informations did not arise in the same territorial jurisdiction, and hear them under the same procedure.

Limitation period

- (4) A prosecution by way of summary conviction under this section may be instituted at any time within, but not after, two years after the time when the

subject-matter of the prosecution arose.

Recovery of fines

(5) Where a person is convicted of an offence under this Act and the fine that is imposed is not paid when required, the conviction shall, on production in a superior court of the province in which the trial was held, be registered in the court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the conviction were a judgment in that court obtained by Her Majesty in right of Canada against the convicted person for a debt of the amount of the fine.

Recovery of costs and charges

(6) All reasonable costs and charges attendant on the registration of the conviction are recoverable in like manner as if they had been registered as part of the conviction.

Admissibility of evidence

(7) Evidence relating to the presence or concentration of alcohol in the blood of a person obtained pursuant to any provision of the *Criminal Code* is admissible in evidence in proceedings taken against a person under this Act in respect of a contravention of regulations respecting the use of alcohol, and section 258 of the *Criminal Code* applies, with such modifications as the circumstances require, to any such proceedings.

R.S., 1985, c. 32 (4th Supp.), s. 41; 1999, c. 9, s. 31.

Offence by employee or agent

42. In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused and that the accused exercised all due diligence to prevent its commission.

Officers, etc., of corporation

43. Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

Appendix 4

CPR's Fitness to Work Medical Policy including list of Safety Critical Positions

FITNESS TO WORK MEDICAL POLICY

THIS BROADCAST APPLIES TO EMPLOYEES IN CANADA ONLY.

U.S. EMPLOYEES, PLEASE DISREGARD.

Please post this communication for Canadian employees who do not have
access to Merlin or Notes

In accordance with requirements in the Railway Safety Act, Transport Canada has approved new Medical Rules for Positions Critical to Safe Railway Operations. These rules become effective Dec. 1, 2001. Transport Canada has also revoked old Orders mandating vision and hearing tests for a broader group of employees.

In order to comply with these new rules, Occupational Health Services (OHS), in consultation with department representatives and labour organizations, has developed a new CPR Fitness to Work Medical Policy.

Safety Critical Positions (SCP) are defined within the policy. Employees who work in Safety Critical Positions must have periodic medical assessments, including hearing and vision tests, and must notify their physician and their optometrist that they occupy such a position.

Safety Sensitive Positions (SSP) are also defined in the policy. These positions are no longer regulated but, because of the nature of their work, employees working in these positions must still meet certain vision and hearing standards, as required by this policy.

The policy allows employees to use their own physician, and to provide for individual accommodation of employees with limitations. All medical records are confidential and are available only to OHS and the individual employee.

Copies of the Railway Safety Act and the Medical Rules are available in CPR's Railway Safety Regulations database and on the Railway Association of Canada (RAC) website at: www.railcan.ca

Copies of the medical guidelines that will be used by treating physicians are also available on the RAC website and on the Canadian Medical Association (CMA) website at: www.cma.ca

A copy of the current Fitness to Work Policy and listings of specific position titles considered SCP or SSP will be maintained on the OHS Public Documents database and in Merlin (PUBLIC,HEALTH,PF7).

If you have any questions regarding the policy or whether you are in a SCP or SSP position, or if your physician has any questions regarding their responsibilities, please contact OHS at 1-866-876-0879.

FITNESS TO WORK MEDICAL POLICY
FOR SAFETY CRITICAL AND SAFETY SENSITIVE POSITIONS
CANADIAN PACIFIC RAILWAY (CANADA)

1. INTRODUCTION

- 1.1 Canadian Pacific Railway (CPR) is committed to the safety and health of our employees and the public. CPR has a responsibility to ensure an employee's fitness to work, which is an important component of workplace and public safety. This policy is consistent with CPR's core value statements.
- 1.2 The intent of this policy is to summarize medical fitness to work requirements for employees of CPR (Canada) who occupy safety critical and safety sensitive positions. Medical guidelines will be reviewed and revised as appropriate to provide a reasonable balance between an individual employee's medical condition and the bona fide occupational requirements of the job.
- 1.3 Specific medical guidelines for Safety Critical Positions are federally mandated and contained in the Medical Rules formulated under the Railway Safety Act ('Medical Rules'). These rules replace the previous medical requirements of General Order O-9.

2.0 POLICY STATEMENT

- 2.1 CPR will ensure a safe and productive environment for employees and provide the necessary resources to promote a safe and timely return to work after injury or illness, maximizing individualized accommodation for employees with any job-specific medical limitations. All employees must report for work in a condition that enables them to safely and effectively perform their duties.
- 2.2 The Medical Rules will be used for all safety critical positions.
- 2.3 The assessment of an employee's fitness to work will be made based on an individual employee's specific job requirements, the

nature of any medical condition, and the level of potential safety risk.

3. SCOPE AND APPLICATION

- 3.1 This policy applies to all employees of CPR (Canada) who occupy safety critical and safety sensitive positions.
- 3.2 Canadian based employees who are required to operate into the United States are subject to the rules and regulations governing cross-border operations, including hearing and vision requirements for locomotive engineers and random substance testing under U.S. Department of Transportation regulations.

4. DEFINITIONS

The following definitions apply to this policy.

Contractor refers to any company or individual providing contracted services to CPR or on behalf of CPR and not on the company payroll.

Medical Rules are those formulated under the Railway Safety Act and specified in the 'Railway Medical Rules for Positions Critical to Safe Railway Operations'. They replace the previous medical requirements of General Order O-9, 'Regulations Respecting the Examination of Vision and Hearing of Railway Employees'. The complete Medical Rules may be found on The Railway Association of Canada website (<http://www.railcan.ca/>).

Safety Critical Positions are railway positions directly engaged in the operation of trains, including rail traffic control. These positions have a direct role in railway operations where impaired performance could result in a significant incident affecting the health and safety of employees, customers, customer's employees, the public, property or the environment. Safety critical positions are listed at Appendix A and are reviewed periodically to reflect any changes in job function. All persons (unionized and non-unionized) who may perform any of these functions are deemed to hold safety critical positions.

Safety Sensitive Positions are railway positions where impaired performance may put public safety at occasional risk as well as put at risk the safety of employees, customers, customer's employees, property or the environment. Safety sensitive positions are listed at Appendix B and are reviewed periodically to reflect any changes in job function. All persons (unionized and non-unionized) who may perform any of these functions are deemed to hold safety sensitive positions.

5. FITNESS TO WORK REQUIREMENTS

5.1 GENERAL

- 5.1.1 Medical information pertaining to an employee is confidential and will only be discussed by Occupational Health Services (OHS) with the employee and the employee's physician. No medical information will be released to employee supervisors. Supervisors are entitled to be aware of employment limitations only.
- 5.1.2 Employees who are required to have a highway vehicle driver's licence must also comply with all medical requirements of the jurisdiction issuing that licence.
- 5.1.3 Employees with limitations will be accommodated, where possible, under the provisions of the Return to Work (RTW) Program.

5.2 SAFETY SENSITIVE POSITIONS

The medical monitoring requirements for Fitness to Work for employees occupying, or performing any of the functions of, safety sensitive positions are as follows:

- a. Subject to a pre-employment, pre-placement or reinstatement medical assessment prior to being allowed to work in such a position.
- b. Subject to hearing and vision testing every 5 years up to the age of 40 and 3 years thereafter until no longer employed in such a position.
- c. Subject to any OHS medical monitoring requirements that may be required for an employee based on the medical condition and the job requirements.
- d. Subject to a medical assessment before returning to such a position after a prolonged absence of greater than six months for other than medical reasons.
- e. For employees not participating in the RTW Program, any medical absences greater than 21 days require a medical report from the treating physician and clearance through OHS prior to RTW.

5.3 SAFETY CRITICAL POSITIONS

In addition to the medical monitoring requirements for Fitness to Work for all safety sensitive employees at Section 5.2, the following are additional requirements for employees occupying, or performing any of the functions of, safety critical positions:

- a. Subject to periodic medical assessments required by the Medical Rules every 5 years up to the age of 40 and 3 years thereafter until no longer employed in such a position.
- b. Subject to any OHS medical monitoring requirements and periodic medical assessments for specific medical conditions as detailed in the Medical Rules for safety critical positions.
- c. Employees occupying safety critical positions who work in the U.S. may be subject to random substance testing under U.S. Department of Transportation regulations and subject to Federal Railroad Administration (FRA) vision and hearing regulations.

6. RESPONSIBILITIES

6.1 Employees in supervisory positions have the following responsibilities:

- a. Must ensure that employees meet the medical requirements of this policy for the job they are to perform.
- b. Consult with OHS on any performance problem that may be related to a medical condition. OHS Guidelines on 'Managing Performance - Medical Issues' provides guidance for supervisors.

6.2 Employees have the following responsibilities:

- a. Seek appropriate assistance from their supervisor, health professional, OHS or the Employee and Family Assistance Program (EFAP) if they have any concerns about their ability to perform their job or if they are unable to perform their duties.
- b. Advise their supervisor of any job-specific medical limitations.
- c. Those who occupy, or who are candidates for, safety critical positions are required by the Railway Safety Act to advise their physician or optometrist of that fact and must advise their physician or optometrist and/or OHS office of any condition that may affect their ability to work safely. Physicians and optometrists assessing employees who work in safety critical positions are required by law to disclose to the Chief Medical Officer (CMO) any medical condition that may affect the employee's ability to work safely.
- d. All employees in safety critical positions must maintain periodic medicals (which include hearing and vision

testing) in accordance with government rules and regulations and CPR policy.

- e. All employees in safety sensitive positions must maintain hearing and vision testing requirements.

6.3 OHS has the following responsibilities:

- a. Determine medical fitness to work and assist the employee in a safe and timely return to work after injury or illness, in accordance with the provisions of the Return to Work (RTW) Program.
- b. Assist in the individualized accommodation for employees with job-specific medical limitations.
- c. Review and revise medical guidelines as appropriate.

7. CONTRACTORS

- 7.1 Contractors who may perform work on CPR property and employees of other railways who may operate on CPR tracks must meet, at a minimum, the Federal rules and regulations applicable to CPR employees performing the same or similar work. Requirements will be specified in applicable contracts.

APPENDIX A

SAFETY CRITICAL POSITIONS - CPR (CANADA)

Any employee or contractor, union or non-union, who is required to perform any of the following functions, will be considered to occupy a Safety Critical Position.

- 1. Locomotive Engineer
- 2. Conductor
- 3. Brakeperson
- 4. Yard Foreman
- 5. Yard Helper
- 6. Yard Service Employee
- 7. Yard Service Helper

8. Utility Yard Employee
9. Rail Traffic Controller
10. Interlocking Rail Traffic Controller

Note: A detailed listing of each job title included under these job positions can be viewed as follows: on Notes OHS Public Documents located on NPAPPS02 or Merlin PUBLIC, HEALTH, PF7.

APPENDIX B

SAFETY SENSITIVE POSITIONS - CPR (CANADA)

Any employee, union or non-union, who is required to perform any of The following functions, will be considered to occupy a Safety Sensitive Position.

1. Track foreman, track supervisor and any other person who takes a track occupancy authorization.
2. S&C Maintainer, S&C Technician and any other person who maintains, repairs or installs track signal systems.
3. Snow plow operator
4. Engine attendant and engine attendant helper
5. Trackmobile operator and trackmobile helper
6. Intermodal toplift operator
7. Auxiliary, mobile & shop crane operator (if rated over 60 tons)
8. Dangerous goods emergency responder
9. Railway police officer
10. Yardmaster

Note: A detailed listing of each job title included under these job positions can be viewed as follows: on Notes OHS Public Documents located on NPAPPS02 or Merlin PUBLIC, HEALTH, PF7.

(French version sent separately due to space limitations).

Appendix 5

Railway Safety Act – Medical Information Sections

Medical Information

Medical examination

35. (1) A person who holds a position that is declared by regulations made under paragraph 18(1)(b) or by any rule in force under section 19 or 20 to be a position critical to safe railway operations, referred to in this section as a "designated position", shall undergo a medical examination organized by the railway company concerned, including audio-metric and optometric examination, at intervals determined by the regulations made under subparagraph 18(1)(c)(iii) or by any rule in force under section 19 or 20.

Physician or
optometrist to
disclose potentially
hazardous conditions

(2) If a physician or an optometrist believes, on reasonable grounds, that a patient is a person described in subsection (1), the physician or optometrist shall, if in their opinion the patient has a condition that is likely to pose a threat to safe railway operations,

(a) by notice sent without delay to a physician or optometrist specified by the railway company, inform the specified physician or optometrist of that opinion and the reasons for it, after the physician or optometrist has taken reasonable steps to first inform the patient, and

(b) without delay send a copy of that notice to the patient,
and the patient is deemed to have consented to the disclosure required by paragraph (a).

Holder of designated
position to inform
physician or
optometrist

(3) A person who holds a designated position in a railway company shall, prior to any examination by a physician or optometrist, advise the physician or optometrist that the person is the holder of such a position.

Railway company
may act in interests
of safe railway
operations

(4) A railway company may make such use of any information provided pursuant to subsection (2) as it considers necessary in the interests of safe railway operations.

Proceedings not to lie
against physician or
optometrist

(5) No legal, disciplinary or other proceedings lie against a physician or optometrist for anything done by that physician or optometrist in good faith in compliance with this section.

Information privileged

(6) Information provided pursuant to subsection (2) is privileged and
(a) no person shall be required to disclose it or give evidence relating to it in any legal, disciplinary or other proceedings; and
(b) it is not admissible in any such proceedings, except
(i) as provided by subsection (4), or
(ii) where the patient consents.

R.S., 1985, c. 32 (4th Supp.), s. 35; 1999, c. 9, s. 27.

Appendix 6

Excerpt from medical fitness for duty policy

1. Assessment for medical fitness for duty

5.1 The Medical Fitness for Duty for a person shall be assessed on an individual basis, taking into consideration medical conditions, both past and current, that could result in:

- a) sudden impairment;
- b) impairment of cognitive function including alertness, judgment, insight, memory and concentration;
- c) impairment of senses;
- d) significant impairment of musculoskeletal function; or
- e) other impairment that is likely to constitute a threat to safe railway operations.

5.2 The medical conditions referred to in Section 5.1 shall include:

- a) diseases of the nervous system, including seizure disorders, narcolepsy, sleep apnea and other disturbances of consciousness, vestibular disorders, disorders of coordination and muscle control, head injury, post traumatic conditions and intracranial tumours;
- b) cardiovascular diseases, including high blood pressure, coronary artery disease, myocardial infarction, cerebrovascular disease, aortic aneurysm, congestive heart failure, cardiac arrhythmia, valvular heart disease and cardiomyopathy;
- c) metabolic diseases, including diabetes mellitus, thyroid disease, Cushing's Disease, Addison's Disease and pheochromocytoma;
- d) musculoskeletal disabilities, including amputation of a limb, arthritis, significant joint dysfunction, disease of the spine, obesity or other significant musculoskeletal conditions;
- e) respiratory diseases, including obstructive or restrictive conditions resulting in functional impairment;
- f) mental disorders, including the following types of mental disorders:
 - i) cognitive, including dementias, delirium and amnesia;
 - ii) psychotic, including schizophrenia;
 - iii) mood, including depression, manic, bipolar;
 - iv) anxiety, including panic attacks and phobias; and
 - v) personality, resulting in anti-social, erratic or aggressive behaviour;
- g) substance abuse, including abuse or dependence on alcohol, prescription medications, or illicit drugs;**
- h) hearing impairment, including hearing acuity;
- i) visual impairment, including distant visual acuity, field of vision, colour vision; and
- j) any other organic, functional or structural disease, defect or limitation that is likely to constitute a threat to safe railway operations.

Appendix 7

Pre- Employment and Pre-Placement Medical

These procedures are directed to managers and HR Specialists involved in hiring and scheduling pre-employment, pre-placement, reinstatement or recall medical examinations. (Canada only).

Purpose

- 1.1 All applicants for safety-sensitive or safety-critical positions are required to undergo a medical assessment to ensure that they are medically fit for the position being considered. Medical clearance must be obtained from Occupational Health Services prior to an individual occupying a safety-sensitive/safety-critical position.

Application

- 2.1 The list of safety sensitive positions is currently under review. The list in "**APPENDIX I**" (last section) is an interim list of positions that require pre-employment, pre-placement, reinstatement, or recall medical examinations (when in doubt contact OHS).
- 2.2 If the candidate for a position requiring a medical examination is a current employee whose current position does not fall under "**APPENDIX I**", a pre-placement medical examination is required.
- 2.3 Employees who occupy a safety-sensitive or safety-critical position and have been absent for more than six months for other than medical reasons are required to undergo an OHS directed medical examination prior to returning to service.
- 2.4 Listed below is a description of what medicals are required by Canadian Pacific Railway:

Definitions

Pre-employments: Pre-employment medical examination is designed to assess medical fitness for external candidates being considered for positions within Canadian Pacific Railway as identified in "**APPENDIX I**"

Requirements:
Physical/Vision/Hearing examina

Pre-placements: Pre-placement medical examination is designed to assess medical fitness for current employees occupying non-safety sensitive positions transferring to positions identified in "**APPENDIX I**"

Requirements:
Physical/Vision/Hearing examina

Reinstatement: Reinstatement medical examination is designed to assess the fitness for work of employees who are being reinstated to a position identified in "**APPENDIX I**"(following termination of employment)

Requirements:
Physical/Vision/Hearing examina

Recalls: Recall medical examination is designed to assess the fitness for work of employees for safety-sensitive or safety-critical positions who have been off for a period of 6 months or more for other than medical reasons

Requirements:
Physical (Vision/Hearing exam if

Procedure

- 3.1 As soon as the desired date of examination(s) is known, the person requesting the examination(s) is to send Occupational Health Services (GRA0151) a completed pre-employment medical request form (Form 802). Examinations should be requested well in advance of the date that offers are to be made to candidates.

The table below outlines the approximate timelines and should be taken into consideration when requesting medical assessments.

Activity	Timelines
Scheduling medical appointment from date of receipt of request from department/H.R.	7-14 days
Completion & receipt of medical report in OHS	7-10 days
Review and decision by OHS physician	
Simple cases	1-2 days
Complex cases	3-20 days
Lead time required	18-46 days

OHS to Book All Pre-Employment Medical Examinations

- 4.1 OHS will book appointments and advise the individual requesting the medical examination(s) within 24 hours of receipt of request and the arrangements made by return message. Depending on the location, separate appointments may be necessary for the drug screen, the medical examination and the vision and hearing test (if all are required).

Medical Examination Report to be Completed at Physician's Office

- 5.1 OHS will provide physicians performing medical examinations with the "CPR Pre-Employment Medical Examination Report" form.

Items Candidates Must Bring to Medical Appointments

- 6.1 All candidates must attend the medical appointments with:
 photo identification.
 all prescription eyeglasses and contact lenses (including container and solution).

Results of Pre-Employment Medical Examinations

- 7.1 OHS will provide the results (fit, fit with restrictions, unfit) of the medical examination(s) to the Manager/HR Specialist as soon as fitness to work has been determined (1 to 20 days from date of receipt of medical reports). OHS will take all reasonable measures to ensure results are obtained as quickly as possible (**see timelines**).

Additional Information and Contact Persons in OHS

- 8.1 The contact person for OHS to either book a medical or answer questions respecting the above is:

Fiona Graham

Fitness to Work Administrator
Telephone: 1-866-876-0879
Fax: (403) 319-6803
Merlin: GRA0151

Appendix 8

Guidelines on OHS and EFAP.

Guidelines for managing employees who present a performance problem which may be related to a medical condition: **Guidelines on OHS and EFAP.**

SCOPE

These guidelines apply to employees in Canada only.

The prime responsibility to manage employees rests with their supervisors and line management.

The purpose of these guidelines is to assist managers in managing employees with performance problems that maybe related to a medical condition.

ROLE DEFINITION

The prime role of Occupational Health Services is to assess the fitness to work of employees, to ensure their safety as well as the safety of the public and other employees, and to provide detailed recommendations related to their work capacity. When doing this, OHS will make recommendations on the support that should be provided to employees in order to help them improve their health and functioning at work.

The main role of the EFAP is to refer the employees for help, not to provide management with an opinion on their fitness to work. However in special circumstances such as substance abuse in an employee in a safety-sensitive position, the EFAP has a limited role of providing management with information and support related to the employee's fitness to work.

OBJECTIVES

To ensure that supervisors understand the nature of the support and information that they can expect from OHS and the EFAP in order to properly manage employees with performance problems related to a medical condition, and that they know who to consult: Chief Medical Officer, Regional Physicians, OHS Specialists or EFAP Referral Agents.

To ensure that supervisors know what support to provide to employees with performance problems related to a medical condition.

GUIDELINES (WHEN TO SEEK MEDICAL ADVICE FROM OHS)

When there is a legitimate reason to believe that an employee's performance problem is related to a medical condition.

An employee states that his/her performance problems are related to a medical condition (physical or psychological, including substance abuse)

Management has serious concerns about an employee's performance problems and legitimate reasons to suspect that they may be related to a medical condition.

GENERAL GUIDELINES

The supervisor meets with the employee, discusses the performance problem, clearly states concerns and gives the employee a chance to discuss.

Supervisors should not query employees nor encourage discussion on details of their medical condition.

If employees relate their performance problems to a medical condition, supervisors should advise that medical expertise will have to be sought to clarify employees' medical fitness to work.

Prior to obtaining clarification of fitness to work, supervisors should encourage employees to receive proper help for their medical condition.

With this goal in mind, employees should be advised to seek help from their treating doctor and/or consult an EFAP Referral Agent for appropriate referral.

The treating doctor, other health professionals and EFAP Referral Agents are resources in place primarily to help employees.

In addition to being referred for help, employees should be asked to go through a company-sponsored medical assessment, the first step of which will be to obtain a report from the employee's treating doctor.

The purpose of this assessment is to establish their work capacity and restrictions as well as to address specific concerns.

Specific reasons for requesting the medical assessment must be explained to the employee.

If an employee refuses to undergo a medical assessment, the performance problem should be dealt with purely as a performance

matter. It is recommended that such cases should be discussed with the Chief Medical Officer.

Employees cannot be forced to undergo a medical assessment or removed from service strictly because they refuse a medical assessment.

WHEN SHOULD MANAGEMENT REMOVE AN EMPLOYEE FROM SERVICE

Management may only remove an employee from service if there are serious concerns related to job performance, not because there is a perception that the employee has physical or mental disabilities.

Deciding what constitutes a serious performance problem is an administrative and, in the case of a unionized employee, a labour relations decision and should be related to the points below:

- Serious safety risk

- Serious disruption to the workplace

- Non-compliance with regulations

Prior to removal from service, the Chief Medical Officer may provide some preliminary advice as to the safety risk related to the employee's performance, behavior and perceived medical condition. This is done only on the basis of information provided by management.

Such advice is obviously not as determinative as the professional opinion that the Chief Medical Officer will issue after a medical assessment has been done.

However, it can assist in deciding if the employee should be immediately taken out of service for serious performance reasons.

Once a medical assessment has been completed, the Chief Medical Officer or Regional Physician will advise regarding the employee's fitness for work.

Employees should only be removed from service for medical reasons when the Chief Medical Officer advises that they are unfit for work.

PROCEDURE TO OBTAIN MEDICAL ADVICE

The supervisor requests medical advice from the Regional Physician. The request is made to the Regional Physician on e-mail, copy to the Chief Medical Officer.

In support of the request, the supervisor prepares a report describing performance problems and concerns with the employee's performance. The

form to complete when making the request is entitled **"Supervisor's Medical Assessment Request Form"** and is available on OHS Public File.

A package for the doctor is also in OHS Public File. It includes: **"Letter to Treating Doctor Requesting Assessment"**, **"CPR Medical Report Form"** and **"Authorization Forms"**.

If the employee agrees to a medical assessment, the supervisor requests the employee in writing to provide a medical report from his/her treating doctor to the Regional Physician. A suggested draft of the letter is in OHS Public File under **"Letter to the Employee Requesting an Assessment"**.

After reviewing the medical information provided by the treating doctor, and discussing with the treating doctor if necessary, the Regional Physician may decide that further medical assessment is required, and discusses such cases with the Chief Medical Officer.

The Regional Physician will make the necessary arrangements for further assessment when needed, and notify the supervisor of the details.

The supervisor will advise the employee of date, time and location and ensure that he/she attends the examination.

Once the assessment is completed, the Regional Physician discusses complex cases with the Chief Medical Officer.

The Regional Physician advises the employee of conclusions and recommendations after consultation with the Chief Medical Officer.

The Regional Physician answers the supervisor's questions related to work performance without divulging confidential medical information and provides information on employees fitness for work.

If the employee is unfit to work and treatment is required, the Regional Physician may defer recommendations to the supervisor until the employee undergoes treatment and is capable of returning to work.

Supervisor should suspend evaluating performance until employee is fit to return to work.

The supervisor meets with the employee to discuss the report and deals with the work situation.

MEDICAL QUESTIONS RELATED TO WORK PERFORMANCE WHICH MAY BE ADDRESSED AS PART OF MED

Work capacity, physical and mental - short and long term prognosis

Fitness to perform specific tasks

Work restrictions, type of work, schedule, workload, etc.

Support and accommodation that is required from management to help the employee

Danger of sudden impairment

Possibility of a medical condition which could impact on safety, e.g. substance abuse, cardiovascular disease, diabetes, depression

Use of medication in a safety-sensitive position

Attitude and behavior with superiors, fellow employees and people who report to him/her

Potential for violence

Injury proneness and/or potential for re-injury

Work relatedness of an injury

Expected presence at work, absenteeism

Etc.

WHEN TO REFER EMPLOYEES TO THE EFAP

The EFAP program provides management the opportunity to make mandatory referrals in the case of employees in safety-sensitive positions, where the case involves substance abuse or any other problem which seriously impacts on safety. (**refer to EFAP guidelines**)

When supervisors make a mandatory referral to the EFAP, the EFAP referral agent will send the employee to a recognized treatment facility or professional for an assessment of the problem and recommendations for treatment.

This procedure may only be used when the supervisor has well documented reasons to believe that an employee in a safety-sensitive position has a problem which seriously impacts safety and in consultation with OHS.

WHAT FEEDBACK CAN MANAGEMENT EXPECT FROM EFAP REFERRAL AGENT

In the case of employees in safety-sensitive positions, the supervisor will be made aware of the assessment and results of treatment (**see EFAP policy**).

According to the policy, if the assessment is "positive", i.e. the employee has been assessed as having a substance abuse problem,

he/she will be held out of service until successful completion of treatment.

After successful completion of treatment, the Regional Physician receives a report attesting to the fact that the employee's problem is under control and making recommendations for follow up. With this information, the Regional Physician can determine if the employee is fit to work.

If employee is fit to return to work a meeting is scheduled by the EFAP referral agent with the supervisor and the employee to clarify the obligation of the employee as far as maintaining sobriety. It is crucial that the supervisor participate in this meeting.

Regarding any other medical problems, if an assessment is done through the EFAP, the case must still be referred to OHS for an assessment of the employee's fitness to work according to the procedure outlined in the first section. As part of the assessment, the employee would be asked to sign an authorization for the report of the assessment done through the EFAP Referral Agent to be sent to the Regional Physician.

Appendix 9

Employee & Family Assistance Program

(Q&A brochure)

EMPLOYEE & FAMILY ASSISTANCE PROGRAM

(EFAP)

What is an Employee & Family Assistance Program ?

The EFAP is designed to help employees, pensioners and their immediate family members find appropriate and CONFIDENTIAL help to resolve personal problems that may affect their job performance, safety or well being.

What kind of problems can the E F A P help with ?

The E F A P can provide referral to the appropriate agency for the following problems;

- * Psychological, including stress
- * Family and marital problems, including violence
- * Financial problems (debt)
- * Substance abuse problems
- * Gambling addiction

How does the E F A P work ?

The request for help is initiated by an employee, pensioner or family member to the EFAP. Once the nature of the problem has been identified, the EFAP will make referrals to professional resources outside the company.

Weekly indemnity benefits are available to eligible employees should a specific treatment plan require a leave of absence for medical reasons. The cost of services are often covered under the extended health care plans, or other assistance may be available.

Who is in charge of the E F A P ?

A joint Union/Management Senior Advisory Committee has been established to oversee the E F A P. This committee establishes policy and provides guidance and direction to the full - time EFAP staff.

Members of the Senior Advisory Committee are:

Dennis Curtis	Neal Foot
General Chairman (BLE)	Vice-President
Canadian Council of Railway	Mechanical Services
Operating Unions also represents	Canadian Pacific Railway
Traffic Controllers	

Ken Deptuck	Brock Winter
Vice-President Brotherhood of	Vice-President Customer
Maintenance-of-Way Employees	Service Team
also representing Transportation	
Communications Union & Int'l	Canadian Pacific Railway
Brotherhood of Electrical	
Workers	

Brian McDonagh	Dr. John Cutbill
National Representative	Chief Medical Officer
CAW-TCA Canada	Canadian Pacific Railway
Rail Division	

Nathalie LaPointe	Mike DeGirolamo
President	Ass't Vice President, Industrial Relations
TCU-Steelworkers	Canadian Pacific Railway

How do I know if I need the E F A P ?

You may need to talk to an EFAP referral agent if:

- o You spend most of the day worrying about a particular problem;

- o You find yourself experiencing difficulty with alcohol or other drugs;
- o You have a financial (debt) problem but don't know where to get help;
- o Your job, health, or family life is being affected by a specific problem.

Is the program really confidential ?

Yes, you can rely on the EFAP staff to maintain confidentiality. There may be situations however where by law, or for reasons of safety, the EFAP must contact Occupational & Environmental Health or a government agency for action. The referral agent can provide information about these exceptions upon request.

Who can I call for more information or confidential assistance ?

Your nearest EFAP Referral Agent can be contacted by calling 1-800-735-0286, or you can dial the city number shown below.

Referral Agents

Name	Territory	Telephone No.
~~~~~	~~~~~	~~~~~
Nancy Drouin Montreal	Province of Quebec, including Smith Falls, Ontario	(514) 481-7775
Louis Muscat Toronto	Windsor, Toronto to Sudbury Ontario	(905) 804-8137
Ian Robb Thunder Bay	Thunder Bay to Chapleau and Sault Ste Marie	(807) 623-6619

Grant Nash      Dryden, Kenora, Ontario      (204) 927-4605  
Winnipeg      and Manitoba

Glen Jacobson      Saskatchewan      (306) 692-0112  
Moose Jaw

Rod Varney      Alberta      (403) 543-8488  
Calgary

Mark Shirley      Alberta      (403) 543-8489  
Calgary

Gary Pfeifer      Kamloops to Vancouver      (604) 944-7232  
Coquitlam      Vancouver Island

Mauro Morrone      Field to Kamloops East      (250) 837-9357  
Revelstoke      Crowsnest to Trail

Manager

Bruce Gudmundson      Calgary, Alberta      (403) 319-6603

*****

#### E F A P POLICY STATEMENT

A program to provide professional, confidential assistance to any Canadian Pacific Railway employee, pensioner or family member who may have personal concerns has been endorsed by the Railway Management and Unions.

The Company and the Unions with which it has collective bargaining relationships, recognize that a wide range of concerns can affect the health and well-being of any employee and their families. These, in turn, may have an adverse effect on an employee's ability to do his/her job.

The EFAP is a broadbrush program which deals with a variety of concerns including: psychological, marital, family, financial, gambling and substance abuse

The Employee and Family Assistance Program ( EFAP ) recognizes that almost any personal problem can be successfully resolved, if it is identified early and referred to an appropriate resource.

The EFAP is designed to provide confidential and professional assistance through a process of assessment, referral and follow-up. Employees are encouraged to seek help by contacting the Referral Agent directly. However, information can also be obtained by contacting an EFAP Committee Member, a Union Representative, a Supervisor, or a fellow worker.

A decision by an employee and/or family member to seek help will not interfere with the employee's job or promotion opportunities, except as mandated by law or as may be necessary for safety reasons. All rights and benefit packages applicable, including those provided by Collective Agreement, will be maintained.

#### **EFAP - A POLICY STATEMENT**

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The Company and the Unions with which it has collective bargaining relationships, recognize that a wide range of concerns can affect the health and well-being of any employee and their families. These, in turn, may have an adverse effect on an employee's ability to do his/her job.

The EFAP is a broadbrush program which deals with a variety of concerns including: psychological, Family and marital including violence, financial, gambling and substance abuse.

The Employee and Family Assistance Program (EFAP)

recognizes that almost any personal problem can be successfully resolved, if it is identified early and the individual referred to an appropriate resource.

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A decision by an employee and/or family member to seek help will not interfere with the employee's job or promotion opportunities, except as mandated by law or as may be necessary for safety reasons. All rights and benefit packages applicable, including those provided by Collective Agreement, will be maintained.

#### Program Overview

The Employee and Family Assistance Program is designed to assist in the identification and resolution of personal concerns, including but not limited to, marital, family, financial, substance abuse, psychological or emotional stress or other personal concerns that may adversely affect employee job performance. The EFAP and Referral Agents will not be involved in any disciplinary process.

The Employee and Family Assistance Program provides employees, pensioners and their immediate family members with confidential, appropriate and timely problem assessment services; and referrals for appropriate diagnosis, treatment or other assistance as required. The EFAP will also maintain contact and working relationships between the workplace and community resources that provide EFAP services. An important part of the Employee and Family Assistance Program is the follow-up service that it can provide to employees.

At Canadian Pacific Railway the Employee and Family Assistance Program is a joint Management/Union program. Policy direction and guidance is provided by a Senior Advisory Committee with a membership of eight people, four nominated by the Unions and four nominated by

Management. The cost of the EFAP staff and facilities is paid for by the Company.

The full time staff of the Employee and Family Assistance Program are responsible to the Senior Advisory Committee for the proper functioning of the program.

There is one EFAP Coordinator located in Winnipeg. The Referral Agents are located in Montreal, Toronto, Thunder Bay, Winnipeg, Moose Jaw, Calgary, Revelstoke and Vancouver. They report to the Manager. This is the group that is responsible for the day to day functioning of the EFAP.

#### How The Program Works

The EFAP is a referral service and the Referral Agent maintains contact with a wide variety of community and professional resources. The Referral Agent is trained to provide a preliminary assessment of an individual's concern, and suggest a course of action. The individual will be advised if the service required is covered by a company benefit program, or if other financial assistance is available.

#### Confidentiality

The service is confidential. The EFAP keeps separate files which are not available to either Management or the Unions. Contact with the EFAP is not reported to either Supervisors, Union Representatives or other family members, unless authorized by the individual.

However the EFAP may be required by law or for reasons of safety to notify a government agency or Management of a particular case, or the individual may be asked to release information to Occupational & Environmental Health so that assessment of fitness to work, and proper medical monitoring can be performed. The Referral Agent can provide information in these particular circumstances.

#### EFAP, ROLES AND RELATIONSHIPS

Many people and activities in the railway work together to make the EFAP successful. Some people work full time for the EFAP whereas others perform EFAP services or functions on a volunteer basis, or as part of their overall duties

associated with some other job. Here are some of the basic roles associated with the EFAP.

#### Senior Advisory Committee:

The Senior Advisory Committee has overall responsibility for the EFAP. They work cooperatively for the benefit of all employees and the workplace.

The Senior Advisory Committee appoints full-time employees to the position of Referral Agent and Coordinator. They approve an annual plan for the staff professionals in such areas as promotion, services to be provided, policy changes, procedures and budgets. They also review the effectiveness of the EFAP on an annual basis and publish an evaluation report.

#### Chief Medical Officer

As with any EFAP, Occupational & Environmental Health is responsible for the health and medical aspects of the program. Specifically, they will be consulted on a confidential basis by Referral Agents and will be guided by their advice. Occupational & Environmental Health is responsible for determining the fitness of an employee for their regular job and will monitor reports concerning an employee's medical care, including aftercare in cases of substance abuse. Where appropriate, the Chief Medical Officer will alert Management if an employee in a safety-sensitive job has not followed the agreed upon aftercare program.

#### EFAP Manager:

The EFAP Coordinator is responsible for ensuring consistency of the policy and program throughout Canada. Specifically he/she is responsible for implementing program changes, providing direction to Referral Agents, to act as a facilitator, to encourage employees to use EFAP services when necessary.

The Manager will act as an information and resource person. He/she will recommend appropriate service providers, ensure contractual arrangements are in place where necessary, and liaise with outside organizations.

He/she will review the activities of local committees, and will work with the Referral Agents to ensure follow-up procedures are in place. The Manager reports to the Senior Advisory Committee and serves as an advisor/member of the Committee.

The current EFAP Manager is Bruce Gudmundson, who is located in Calgary and can be reached at (403) 319-6603.

#### EFAP Referral Agents:

This position is pivotal to the success of the EFAP. The Referral Agent has a very clear role;

- (1) to talk privately and confidentially with employees, pensioners or family members who wish to utilize the service of the Employee and Family Assistance Program;
- (2) to help employees, pensioners or family members access appropriate outside resources;
- (3) to ensure follow-up contact with clients referred for assistance; and
- (4) to guide local awareness committees and seek their help in fostering the program and its objectives.

For reasons of confidentiality, only the Referral Agent or the Coordinator is authorized to do a referral. It is the Referral Agent who will meet with employees, pensioners or family members on a confidential basis. They are responsible for preliminary assessment of the individual's need and the referral to appropriate help. The Referral Agent must deal with people in a manner that acknowledges the trust and dignity of the individual.

Dial 1-800-735-0286 to reach your nearest EFAP Referral Agent, or you can dial the city number shown below.

Nancy Drouin	Montreal	(514) 481-7775
Louis Muscat	Toronto	(905) 804-3137
Ian Robb	Thunder Bay	(807) 623-6619
Grant Nash	Winnipeg	(204) 927-4605
Glen Jacobson	Moose Jaw	(306) 692-0112
Rodney Varney	Calgary	(403) 543-8488
Mark Shirley	Calgary	(403) 543-8489
Mauro Morrone	Revelstoke	(250) 837-9357
Gary Pfeifer	Coquitlam	(604) 944-7232

### Supervisors:

Supervisors are responsible for the safe and efficient operation of the workplace, and the focus of their concerns should be on work performance. The role of the Supervisor is to meet with an employee whose work performance is below standard and if deemed appropriate, to offer the assistance of the EFAP. The manner in which a Supervisor deals with employees is fundamental to the success of an EFAP. However, the mention of the EFAP does not take away the responsibility of the Supervisor to take whatever administrative steps may be required in cases of unsafe or unsatisfactory performance.

### Union Representatives:

Union representatives are sometimes in the best position to identify employees experiencing personal problems. They can strengthen the EFAP by advising employees of its availability and procedures, particularly the aspect of confidentiality. Like Supervisors, Union Representatives will be concerned about safety and productivity in the work place and should be involved in discussions regarding work performance.

## SUBSTANCE ABUSE

The abuse of alcohol or other drugs is recognized as a health problem. To the extent that abuse affects the health, safety, performance and conduct of employees on the job, and impose hardship on the employee and their family, it is a problem of concern to management, unions and employees which requires action.

If untreated, alcoholism or other drug abuse can result in permanent disability or death, but with proper motivation and treatment can be controlled. To this end, employees who may have such a problem are encouraged to seek help through the EFAP and to follow through with the prescribed treatment.

The prime responsibility in recognizing alcoholism or drug abuse and seeking help through the program rests with the employee. Employees who are concerned that they may have a substance abuse problem, may request EFAP assistance in



finding facilities for diagnosis or treatment. This will not jeopardize their job nor affect promotional opportunities, provided they undergo approved rehabilitation, resulting in control of the problem.

An important step in the rehabilitation process is the need to recognize that continued abstinence is the primary goal. Experience demonstrates that if an individual who has an alcohol or drug abuse problem is to succeed in controlling it, the following steps must be undertaken:

- i Recognize and acknowledge the fact that the problem exists;
- ii Complete an appropriate course of treatment with an agency established to deal with the problem of substance abuse. The agency must be approved by the EFAP and Chief Medical Officer:
- iii Cooperate with the EFAP regarding follow-up and the aftercare program. The value of continued support and follow-up cannot be over emphasized.
- iv In cases of alcoholism, full participation in Alcoholics Anonymous or in cases of drug abuse active participation with an approved agency, or self help group.

#### How the program works

If an employee finds that substance abuse has become a matter of concern, they should contact the EFAP Referral Agent without delay. The Referral Agent will meet with the employee and explain the program's requirements, explain under what circumstances the employee will be granted leave of absence to undertake treatment, explain the importance of follow-up and after-care to overall recovery, and follow-up with the employee's progress.

There may be occasions where the possibility of a substance abuse problem has been identified by a Supervisor, and in such a situation the Supervisor should discuss the matter with the employee and offer assistance as described herein. In a safety-sensitive position, this may include requiring the employee to undertake a substance abuse evaluation

through a recognized facility.

What are the procedures?

1. If the need for substance abuse treatment has been identified, arrangements are made for admission into an approved treatment program. The EFAP Referral Agent will assist in this matter.
2. On completion of treatment, the treatment centre will provide a client discharge summary, a copy of which is given to the Referral Agent. This discharge summary will outline the after-care program agreed upon by the employee and his/her treatment counsellor, and is an integral part of a total recovery. It will encourage an employee to actively participate in AA or an approved drug counselling agency or self-help group.

Return to work

3. The goal in a substance abuse case is rehabilitation so that the individual can return to work and a healthy life as soon as possible.
4. Return to work is tied in with the employee having fulfilled the commitments of the program. The Referral Agent can assist with re-integration if the employee has any concerns. Safety-sensitive employees must provide satisfactory evidence of successful treatment to the Chief Medical Officer, who is responsible for authorizing return to work from a medical point of view.

Prior to a safety-sensitive employee's return to work, a re-integration meeting must take place between the employee, Referral Agent, Supervisor, and if the employee wishes the union representative. When possible the employee's treatment counsellor may also participate.

Benefit Payments

5. Benefit payments under the Company's weekly indemnity program will be available to an eligible employee when treatment for substance abuse is started under a doctor's care. The Referral Agent can assist in preparing the claim form.

6. Benefit payments are made through National Life or Sun Life and will continue for a period of 15 weeks. If the employee is still disabled after the 15-week period, he/she will receive a Record of Employment certificate to enable the employee to apply for Unemployment Insurance Sickness Benefits. A further 11 weeks of weekly indemnity benefits may be available after that time if the employee is still disabled.
7. Details about eligibility requirements and how the benefit plans work are contained in the Benefit Plan booklets available through Supervisors or EFAP Referral Agents.

#### Financial assistance for treatment purposes

8. An employee may apply to the Company for an interest free loan to be applied towards the cost of treatment for either an employee or an immediate family member. Payment is made directly to the treatment facility and details of the required procedures can be obtained through the EFAP Referral Agent. The maximum loan per employee is \$3,000.00.

#### RELAPSES

Sometimes a person who has successfully completed a course of treatment for substance abuse may relapse.

The Substance Abuse Policy provides that an employee may seek a second course treatment, with applicable benefits, provided the employee has worked for 30 calendar days since the end of his or her first treatment.

A second course of treatment or "second chance" will only be allowed under the program with authorization from the respective Service Area Manager. Any person seeking a second chance should contact the Referral Agent who will advance the request through the EFAP for authorization.

#### MANDATORY REFERRALS

There are two kinds of referrals to the EFAP whether the case involves substance abuse or any other personal problem;

a Voluntary Referral or a Mandatory Referral.

A Voluntary Referral is when an employee contacts the EFAP himself seeking help.

A Mandatory Referral is made solely on the basis of work performance. In a mandatory referral, the Supervisor must provide written documentation to support the reasons for the referral. A Mandatory Referral Form must be completed, signed, and sent to the Referral Agent.

It is important to note that a Mandatory Referral is only possible in a safety-sensitive position, for example, a position which works on or about moving or heavy equipment, including highway vehicles. If there is a question as to whether a particular position is safety-sensitive, the Referral Agent or EFAP Manager should consult the Chief Medical Officer for clarification.

The following is a matrix indicating the differences in the handling of safety-sensitive versus non safety-sensitive cases and between voluntary and mandatory referral to the EFAP.

SAFETY SENSITIVE	NON-SAFETY SENSITIVE
<hr/>	
MANDATORY	
Referral based on work performance, if positive assessment employee cannot work in safety-sensitive position until successful completion of treatment. If negative assessment treat as work performance problem. In either case, Supervisor knows about referral, assessment and results of treatment.	No mandatory referral. If work performance warrants Supervisor may request employee to involve Referral Agent but will not know if contact made or results. Work performance is only criterion for any further action by Supervisor.
<hr/>	
VOLUNTARY	
Referral at request of employee, family member,	Referral at request of employee, family member,

etc. If positive assessment employee cannot work in safety-sensitive position until successful completion of treatment. Occupational Health will be advised of positive assessment and involved thereafter, Supervisor will be advised at latest on completion or failure of treatment and involved in re-integration. If negative assessment, only Referral Agent has knowledge.

etc. In general, there is no need for knowledge by anyone except Referral Agent. Occupational Health may become aware if there are consequent conditions, Supervisor will not be advised whether assessment is positive or negative or whether treatment is successful or not.

*****

**Confidential for EFAP and OHS Files  
Contract for Successful Treatment  
(Safety Critical/Sensitive Contract)**

I (Employee Name) agree to meet the following treatment objectives in order to ensure a safe and successful recovery.

Attend and co-operate with the assessment appointment on (Enter Assessment Date) at the (Name of Treatment Centre).

Actively participate and complete any program recommended by the (Name of Treatment Centre) as a result of their assessment, including remaining abstinent from the use of alcohol and prohibited drugs.

Participate in any continuing care meetings.

Participate regularly and actively in meetings of the self-help group recommended by the Treatment Centre.

I will make contact with Employee & Family Assistance Program Referral Agent (Enter Referral Agent Name) once a month for the first year and every 2 months in the second year. The contract start date is (Enter Start Date) and the completion date is (Enter Completion Date).

I understand that the Chief Medical Officer and Occupational Health Services will be advised if I fail to follow the above conditions. Where appropriate, the Chief Medical Officer will alert management of the reason(s) for my failure. I realize that I will be withheld from service should a breach of these terms and conditions occur.

Signature: _____ Date: _____

*****

Employee & Family Assistance Program  
MANDATORY REFERRAL FORM

Name of Referring Supervisor

Department

Phone #

Personal Merlin ID

EMPLOYEE INFORMATION

Mr.

Mrs.

Ms.

Age:

Employee no:

Position:

Department

Supervisor:

Length of Service

Nature of work:

Employment Status:

Active:

Out of Service

Date:

Terminated

Date:

Other, specify

Marital Status:

Single Married Divorced Separated Common-Law Widow

Number of Dependents:

REASON FOR REFERRAL:

Precipitating incident (if any) :

Nature of Problem  
or Complaint

Never Occasionally Frequently

Poor productivity or work  
performance

Absenteeism

Lateness

Drinking on Job

Alcohol on Breath

Other, specify

Indicate any significant disciplinary or warning action taken in last  
two years (Give Dates).

Does the employee dispute the nature of the complaints? Yes No

If yes, explain

Does the employee dispute the warning action taken? Yes No

If yes, explain

Does the employee admit to a substance abuse problem? Yes No

What work performance targets, if any, must the employee attain in order to maintain satisfactory employment?

What type of sickness/disability arrangements have been made?

Where applicable has the union representative been consulted about this employee's work performance? Specify.

Has employee been advised to make contact with the EFAP Referral Agent? Yes No

If yes, By what Date:

	Date
Signature of referring person	
Position	Department

Signature of employee





## **Appendix 10**

### **Substance Testing**

## **CANADIAN PACIFIC RAILWAY (CANADA)**

### **SUBSTANCE TESTING POLICY**

#### **FOR SAFETY CRITICAL AND SAFETY SENSITIVE POSITIONS**

### **1. INTRODUCTION**

- 1.1 This policy outlines practices and procedures that govern substance testing. This policy will constitute an integral part of ensuring that railway operations are carried out in the safest possible fashion.
- 1.2 Employees with substance abuse problems are encouraged to contact the Employee and Family Assistance Program (EFAP) which is designed to provide employees, pensioners and family members with timely and confidential problem assessment services, and referrals for diagnosis and professional help with personal problems where required, including substance abuse. Employees in need can consult the EFAP about substance abuse by calling the nearest EFAP Referral Agent toll free at 1-800-735-0286. Information about the Company substance abuse policy can be found in the Personnel and Administration Manual, under policy # 1800.

### **2. POLICY STATEMENT**

- 2.1 Canadian Pacific Railway (CPR) is committed to the safety and health of our employees and the public where they are impacted by our operations. Substances, including alcohol, illegal and illicit drugs and medications have the potential to impair an employee's ability to safely perform their job which could result in serious adverse effects on employees, co-workers, the public and the company as a whole. The aim of this policy is to minimize a potential risk of impaired performance due to inappropriate substance use.

### **3. SCOPE AND APPLICATION**

- 3.1 This policy applies to both safety critical and safety sensitive positions of CPR and its subsidiaries in Canada.

- 3.2 Canadian based employees who are required to operate into the United States are subject to the rules and regulations governing cross-border operations.

#### 4. DEFINITIONS

The following definitions apply to this policy.

**Alcohol** in this policy refers to the intoxicating agent in beverage alcohol (e.g., wine, beer, distilled spirits and similar products), ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol. This includes alcohol that may be contained in other liquids, such as 'de-alcoholized' (0.5%) beer, mouthwash, cough syrups and other medications which may have an alcohol base.

**Beverage alcohol** refers to the beverages regulated by provincial liquor control legislation (e.g., wine, beer, distilled spirits and similar products).

**Company** refers to Canadian Pacific Railway Company and its wholly owned subsidiaries.

**Drug** includes illegal drug, illicit drug and medication, the use of which has the potential to change or adversely affect the way a person thinks, feels or acts. For the purposes of this policy, drugs of concern are those that may inhibit an employee's ability to perform their job safely and meet performance expectations.

**Illegal drug** means any substance which is legally obtainable but has not been legally obtained (e.g., sedatives or narcotics for which a prescription should have been obtained).

**Illicit drug** means any substance which is not legally obtainable and whose use, sale, possession, purchase or transfer is restricted or prohibited by law (e.g., street drugs such as marijuana and cocaine).

**Medication** means any drug or substance used for medicinal purposes that has been appropriately prescribed by a physician or purchased on an over-the-counter basis.

**Negative Test Result** is a substance test result which verifies that a substance is either not detected or is below established cutoff levels according to accredited substance testing procedures.

**Positive Test Result** is a substance test result which verifies the presence of a substance at or above established cutoff levels according to accredited substance testing procedures.

**Safety Critical Positions** are railway positions directly engaged in the operation of trains, including rail traffic control. These positions have a direct role in railway operations where impaired performance could result in a significant incident affecting the health and safety of employees, customers, customer's employees, the public, property or the environment. Safety critical positions are listed at Appendix A of the Fitness to Work Medical Policy for Safety Critical and Safety Sensitive Positions (Link to be provided in final version) and are reviewed periodically to reflect any changes in job function. All persons (unionized and non-unionized) who may perform any of these functions are deemed to hold safety critical positions.

**Safety Sensitive Positions** are railway positions where impaired performance may put public safety at occasional risk as well as put at risk the safety of employees, customers, customer's employees, property or the environment. Safety sensitive positions are listed at Appendix B of the Fitness to Work Medical Policy for Safety Critical and Safety Sensitive Positions (Link to be provided in final version) and are reviewed periodically to reflect any changes in job function. All persons (unionized and non-unionized) who may perform any of these functions are deemed to hold safety sensitive positions.

**Substance** includes alcohol, illegal drugs, illicit drugs, and medication, the use of which has the potential to change or adversely affect the way a person thinks, feels or acts. For the purposes of this policy, substances of concern are those that may inhibit an employee's ability to perform their job safely and meet performance expectations.

**Substance abuse** includes the continued use of alcohol or drugs despite the knowledge of recurring disturbance in health, work or social functioning.

**Substance test** is a standardized urine drug or alcohol screen test to assess levels of drugs (which include cannabinoids, cocaine, phencyclidine, opiates and amphetamines) or alcohol and/or a standardized alcohol breathalyzer test to assess levels of alcohol in the body.

## **5. METHODS OF TESTING**

### **5.1 Substance testing consists of three processes:**

- a. Sample (breath for alcohol preferable or urine for drugs) collection** is done under controlled conditions at a designated collection site by trained

and authorized personnel of an agency specified by the company which ensures privacy during collection as well as the security and integrity of the sample. Urine collection is done using a split sample procedure following the North American recognized standards of the United States Department of Transportation (U.S. DOT 49 CFR Part 40). Chain of custody documentation follows the sample throughout the process.

- b. **Laboratory analysis** is done by qualified laboratories meeting established guidelines and certification.
  - c. **Medical review** is performed by a Medical Review Officer, who is a qualified licenced physician acting as an independent and impartial reviewer of the substance test results.
- 5.2 Employees and potential employees taking substance tests will be required to sign a consent form authorizing the testing laboratory to release test results to the Chief Medical Officer, who is the designated employer representative. Test results will be released by the Chief Medical Officer as either a negative or positive test result.
- 5.3 A substance test for alcohol will usually be accomplished using a breathalyzer that is equipped to reflect an immediate blood alcohol level using a breath sample. Breathalyzers must only be operated by a person who is certified to operate the device. If breathalyzer collection is not possible then urine collection will be done.
- 5.4 Management will not be involved with the chain of custody of a substance test sample. Management is responsible to make all necessary arrangements for testing including transportation of the employee to and from the test location. Management will ensure the employee is not left unattended from the time of notification of testing until under supervision of the testing personnel. No advance notice will be given to the individual to be tested.

## **6. PRE-EMPLOYMENT SUBSTANCE TESTS**

- 6.1 Potential employees for safety critical and safety sensitive positions will be required to submit to a substance test arranged as per Appendix A. A negative substance test result is a condition of employment in these positions.
- 6.2 The substance test referred to in paragraph 6.1 forms part of the pre-employment medical examination. A substance test will not be used as an initial screening instrument and should not take place before determining that the potential employee has all other qualifications necessary to fill the position. There must be a legitimate offer of employment in the event that the applicant successfully passes a substance test.

- 6.3 A potential employee with a negative substance test but with a history of recent substance use/abuse may require further medical assessment to determine if substance use/abuse may be a potential safety concern.

## **7. PRE-PLACEMENT SUBSTANCE TESTS**

- 7.1 Employees working in non-safety critical or non-safety sensitive positions who transfer into safety critical or safety sensitive positions will require pre-placement substance testing arranged as per Appendix A. A negative substance test result is a condition of employment in these positions.
- 7.2 Employees who test positive will have further medical assessment as deemed appropriate by Occupational Health Services. The Chief Medical Officer will provide test results and guidance to the employee on a confidential basis. Subsequent applications to occupy a safety critical or safety sensitive position will be given consideration based on: a negative substance test result, a medical assessment, proof of abstinence and/or appropriate follow-up.
- 7.3 The Chief Medical Officer will advise appropriate management whether an employee is either fit or unfit for the desired position. Substance test results or other reasons that may preclude an employee from occupying a safety critical or safety sensitive position will be handled on a confidential basis.

## **8. FOR CAUSE SUBSTANCE TESTING**

- 8.1 The company may request that employees occupying a safety critical or safety sensitive position submit to a 'for cause' substance test when independent evidence creates reasonable cause to believe an employee is unfit to perform their duties due to adverse effects of substance use while on or subject to duty. This may include a post-accident / incident situation. Such tests would be arranged as per Appendix A.
- 8.2 'Independent evidence' as noted in paragraph 8.1 may include such observations as:
- the physical appearance of the employee
  - the behaviour of the employee
  - the speech patterns of the employee
  - breath odor of the employee
  - observed use of a substance
  - possession of a substance
  - an event or chain of events suggesting reckless, irrational and/or dangerous behaviour.

- 8.3 Employees cannot be forced by management to submit to a substance test. Refusal to submit should be witnessed by at least two management employees and documented. Such documentation should also include observations / information noted in paragraph 8.2. Consequences of refusal to submit to a substance test are detailed below at paragraph 10.
- 8.4 In all cases of for cause substance testing the employee(s) involved will be removed from service pending the results of an investigation.

## **9. UNANNOUNCED SUBSTANCE TESTING**

- 9.1 An individual may be subject to specific terms and conditions of reinstatement or return to work into a safety critical or safety sensitive position. This may require participation in an unannounced substance testing program for a defined period of time. Such program will be managed by the Chief Medical Officer with all tests administered through a medical services provider.
- 9.2 Employees who test positive will be removed from service and a formal investigation will be conducted.
- 9.3 Consequences of refusal to submit to a substance test are detailed below at paragraph 10.

## **10. TESTING VIOLATIONS**

- 10.1 Where an employee fails to report for a test, refuses to submit to a test, or attempts to tamper with a test sample, the employee will be removed from service pending the results of an investigation. This investigation may lead to corrective action measures up to and including dismissal.

## **APPENDIX A ARRANGEMENTS TO SCHEDULE A SUBSTANCE TEST**

### **1. Pre-Employment / Pre-Placement**

- 1.1 All pre-employment and pre-placement substance tests are to be arranged by the hiring officer with Occupational Health Services (OHS) as part of the pre-employment/pre-placement medical assessment process. Hiring managers will be advised of the date and location for this testing.

### **2. For Cause**

- 2.1 The supervisor of the employee to be subjected to 'for cause' testing is to contact CPR's service provider directly after the employee has consented to the substance test.
- 2.2 CPR's service provider for 'for cause' tests is Drugtec Systems Inc. of Calgary. They can be reached on a 24-hour basis at 1-888-Drugtec (378-4832).
- 2.3 The supervisor of the employee to be tested is to advise Drugtec of the name and location of the employee. Drugtec shall, as soon as possible after receiving the call from CPR, advise the CPR supervisor of:
  - a. The location of the nearest off-site collection location where the employee can provide a sample and the time at which such sample can be taken.
  - b. The approximate time it will take for a trained medical technician to arrive at the location for the purpose of an on-site collection.
- 2.4 Upon receiving the advice referred to in paragraph 2.3, the CPR supervisor shall advise Drugtec whether the on-site collection is required or whether the employee will attend (accompanied by the supervisor) at the nearest off-site collection location identified by Drugtec.
- 2.5 Drugtec shall arrange for the appropriate collection based on the request from the CPR supervisor. The CPR supervisor should not participate in the collection or the chain of custody of the sample, but must accompany the employee to the off-site collection location or ensure the employee is supervised while waiting for the on-site collection.
- 2.6 As soon as possible after a 'for cause' test is completed, the supervisor involved shall advise OHS of the location and name of the employee. OHS



will advise the supervisor of the results of the substance test as soon as possible after they are received.

**3. Unannounced**

- 3.1 Reinstatement or return to work substance tests may include a test at the time of reinstatement and unannounced substance testing for a specified period of time.
- 3.2 At the time of reinstatement or return to work, the substance testing is conducted with the reinstatement or return to work medical and would be similar to pre-placement procedures.
- 3.3 Unannounced substance testing procedures are detailed at Occupational Health Services Public Documents located on NPAPPS02 or Merlin PUBLIC,HEALTH.

## **Appendix 11**

### **Alcohol and Drug Policy**

All CPR Employees and Contractors (Canada)

Issuing Departments: Operations and Human Resources

**Policy** Canadian Pacific Railway (CPR) is committed to the Statement safety and health of our employees and the public where they are impacted by our business operations and/or by the actions of our employees. The aim of this policy is to minimize a potential risk of impaired performance due to inappropriate substance (alcohol and drug) use.

**Accountability** All employees and contractors have the responsibility to read, understand and comply with this policy, and to seek advice either through their supervisor, their primary care physician, or other health care professional, including Occupational Health Services, if they have any concerns related to the adverse effects of substance use.

All employees having individuals reporting to them are responsible for ensuring that the policy and related safety requirements are communicated and adhered to within their respective departments and teams.

In all cases of a suspected or alleged policy violation, an investigation will be conducted and documented to verify that a policy violation has occurred before considering corrective action. The appropriate corrective action in a particular circumstance will depend on the nature and seriousness of the policy violation, and may include measures up to and including dismissal.

Occupational Health Services has the responsibility to provide advice on any concerns related to the potential adverse effects of substance use and to determine medical fitness to work, as required. Further responsibilities include assisting in the communication of this policy and coordinating the on-going review and revision as appropriate.

* * * * *

#### **Process and Application**

**Scope** This policy applies in Canada to all CPR employees as well as individuals hired by CPR on a contractual or temporary basis. This policy shall be referenced, where appropriate, into

contracts between CPR and any contractor. Additionally, the policy applies to all situations which are located on Company premises or involve Company business or involve a Company social function.

**Definitions** For an explanation of the words or terms used in this policy, please refer to the “Definitions” which can be found in Appendix A to this policy.

**Standards  
To be met**

All employees and contractors must report for work in a condition that enables them to safely and effectively perform their duties. CPR employees and contractors must report to work and remain able to perform duties at work free of those effects of alcohol, illicit or illegal drugs, or medication that have potential to adversely affect the way a person thinks, feels or acts. Employees and contractors must also be free of the adverse effects of substances if operating Company vehicles while off duty.

Any employee or contractor contacted for an unscheduled call-out or emergency response will declare at that time to their supervisor whether any standards in this policy are likely to be violated. If so, the employee or contractor should not be required to report to duty and an alternate should be found.

Employees and contractors occupying safety critical or safety sensitive positions are governed as well by the requirements of applicable policies, rules and regulations (e.g. Canadian Rail Operating Rules – Rule G, CPR Form 300-4).

All employees and contractors will be held to the same standard of accountability as mentioned in the previous paragraph whenever they are directly affecting or involved in Company Operations (as defined in the “Definitions” in Appendix A) or are present at a CPR Operations site.

The specific standards related to the various categories of substances are outlined below.

**Alcoholic Beverages** The consumption, possession, distribution, offering or sale of alcoholic beverages on Company premises is prohibited except on Vice President or higher approval. Sealed containers of alcoholic beverages in personal vehicles on Company premises are permitted as per provincial law.

	<p>Alcoholic beverage consumption is not permitted during working hours, while subject to duty, on call or on scheduled call-out, for all persons occupying safety critical and safety sensitive positions, and for all employees when they are directly affecting or involved in Operations or are present at an Operations site.</p>
Illicit / Illegal Drugs	<p>The use, possession, distribution, offering or sale of illicit drugs, illegal drugs or drug paraphernalia, and the possession, distribution, offering or sale of prescription medication for which a prescription has not legally been obtained, are prohibited on Company premises, on Company business and at Company social functions.</p>
Medications	<p>Medications, both prescribed and over-the-counter, are to be used in a responsible manner. The intentional misuse of prescribed and over-the-counter medications (e.g. not using the medication as it has been prescribed or using someone else's prescription medication) on Company premises or on Company business is prohibited. Medications of concern are those that have the potential to inhibit an employee's ability to perform their job safely and productively.</p>
Searches	<p>CPR may conduct searches for alcohol or drugs on Company owned or controlled premises in support of this policy. Searches of places such as Company buildings, equipment or vehicles may be conducted randomly. Employees should have no expectation of privacy in these circumstances.</p> <p>Where CPR determines that it has reasonable cause to do so, it will also conduct unannounced searches of other places over which employees may have some expectation of privacy (e.g. lockers, desks, etc.). Managers should consult with the CPR Police Service, Legal Services or Industrial Relations before initiating a search based on reasonable cause.</p>
Prevention and Assistance	<p>Prevention and early identification of potential alcohol and drug problems is important in reducing the progression to substance abuse or dependence. The abuse of, and dependence on, alcohol or other substances are concerns to management, unions and employees to the extent that it affects the health, safety, performance, and conduct of employees on the job, and imposes</p>

hardship on the employee and their family.

The CPR Employee and Family Assistance Program (EFAP) is a valuable resource in assisting employees who may have abuse or dependency issues related to alcohol or other substances. The role of EFAP is detailed in CPR Policy 1800 Substance Abuse (Canada). The EFAP can also provide education services to assist in the prevention of potential problems.

#### Escort Procedures

An employee or a contractor who is considered to be unsafe for work will be escorted from Company premises under the direction of the supervisor. Escort procedures will be dictated by circumstances and may include:

- The employee or contractor escorted to the nearest appropriate medical facility for a medical assessment if there is a medical problem that requires immediate attention.
- The employee or contractor provided with transportation to their place of residence or the care of another person.

Once escorted from the Company premises, an employee or a contractor may be removed from service pending a medical fitness to work assessment and/or the completion of an investigation of the possible policy violation.

#### Impaired Driving

Employees and contractors are responsible to report to their supervisor any alcohol or drug related impairment charges while driving a Company vehicle.

#### Alcohol and Drug

Employees and contractors who occupy safety critical Testing and safety sensitive positions may be subject to alcohol and drug testing in accordance with the CPR (Canada) Substance Testing Policy for Safety Critical and Safety Sensitive Positions.

#### Company Social Functions

Social functions include structured social events held at commercial establishments, public facilities, or on Company premises with prior approval, which are sponsored in whole or in part by the Company. Appropriate regard will be taken for the safety and well-being of the individuals present and the community.

#### Alcoholic

Consumption of alcoholic beverages may be permitted at

**Beverages at  
Company Social  
Functions**

Company social functions with Vice President or higher approval, and employees will ensure that such alcohol consumption is individually controlled.

Alcoholic beverage use at Company social functions must be in accordance with the following guidelines.

**Designation of a  
Responsible  
Host or Hostess**

All Company social functions must have a designated "Chief Host/Hostess" who will be responsible for the following:

- Obtaining appropriate liquor permits, as required.
- Acting as a sole contact with the servers at the function in regards to opening and closing times, and all food and beverage arrangements, etc.
- Ensuring alcoholic beverage dispensing areas are attended at all times, and alcohol is not served to individuals who appear to be intoxicated.
- Taking necessary steps to prevent abusive or unsafe behaviour.
- Taking necessary steps to prevent an apparently intoxicated attendee from driving after the function. This would include the provision of alternate transportation or accommodation where necessary (e.g. taxi cabs, designated drivers, etc.).
- Involving the authorities (e.g. police) if an inappropriate incident occurs or an attendee disregards advice.

**Safety Precautions  
For Company Social  
Functions**

Social events will be organized in a manner that minimizes the potential for accidents, including the identification and elimination of potentially harmful situations.

Alcoholic beverage consumption should be limited by the use of cash bars or the distribution of beverage tickets, as well as limiting bar hours. Bars should be tended at all times and servers instructed not to mix double drinks or add extra alcohol.

Non-alcoholic beverages should always be served as well, including soft drinks, juices, coffee and tea. Food should be provided at any social event where alcohol is served.

A fixed time should be established to end the event, and alcoholic beverage service stopped at least one hour prior to this time.

Any Company hosting situation, that results in inappropriate behaviour or that puts the safety of the individuals present or the community at risk, will necessitate a review of this policy with recommendations to ensure that the situation would not recur.

#### Administration

##### Additional Information

For safety rules, regulations and policies such as the Fitness to Work Policy for Safety Critical and Safety Sensitive Positions CPR (Canada) and the CPR (Canada) Substance Testing Policy for Safety Critical and Safety Sensitive Positions, Lotus Notes users may view the OHS Public Documents database located on server NPAPPS02 and Merlin users may view the public file by typing PUBLIC,HEALTH in the upper left hand corner and pressing PF7.

N.R. Foot  
Senior Vice-President  
Operations

R.A. Shields  
Vice-President  
Human Resources and Industrial Relations

Cross Reference:      Policy 1800, Substance Abuse (Canada)  
Policy 1801, Employee and Family Assistance Program  
- Confidentiality

## APPENDIX A

### DEFINITIONS

Alcohol	refers to the intoxicating agent in alcoholic beverages (e.g. wine, beer, distilled spirits and similar products), ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol. This includes alcohol that may be contained in other liquids, such as “de-alcoholized” (0.5%) beer, mouthwash, cough syrups and other medications.
Alcoholic Beverage	refers to the beverages regulated by provincial liquor control legislation (e.g. wine, beer, distilled spirits and similar products).
Company	refers to Canadian Pacific Railway and its wholly owned subsidiaries.
Company Business	refers to all structured business activities undertaken in the course of the Company’s operations whether conducted on or off Company premises. Employees are considered to be on Company business whenever they are driving vehicles or operating mobile equipment in the course of employment.
Company Premises	includes, but is not restricted to, all land, property, structures, installations, facilities, vehicles (including executive/perquisite vehicles on Company business) and equipment owned, leased, operated or otherwise controlled by the Company.
Contractor	refers to any company or individual providing contracted services to CPR or on behalf of CPR and not on the Company payroll.
Drug	includes illegal drug, illicit drug and medication, the use of which has the potential to change or adversely affect the way a person thinks, feels or acts. For the purposes of this policy, drugs of concern are those that may inhibit an employee’s ability to perform their job safely and meet performance expectations.
Illegal drug	means any substance which is legally obtainable but has not been legally obtained (e.g. sedatives or narcotics for which a prescription should have been obtained).
Illicit drug	means any substance which is not legally obtainable and the use, sale, possession, purchase or transfer of which is



	restricted or prohibited by law (e.g. street drugs such as marijuana and cocaine).
Medication	means any drug or substance used for medicinal purposes that has been appropriately prescribed by a physician or purchased on an over-the-counter basis.
Operations	includes any work or environment where the control or is affected, where there is a risk of injury or accident and/or there is a requirement to wear Personal Protective Equipment. This is not restricted to CPR Operations departments but also includes other areas such as Intermodal Operations, Supply Services Operations, and Distribution Centres.
Safety Critical Positions	are railway positions directly engaged in the operation of trains, including rail traffic control. These positions have a direct role in railway operations where impaired performance could result in a significant incident affecting the health and safety of employees, customers, customer's employees, the public, property or the environment. Safety critical positions are listed at Appendix A of the Fitness to Work Medical Policy for Safety Critical and Safety Sensitive Positions CPR (Canada) and are reviewed periodically to reflect any changes in job function. All persons who may perform any of these functions are deemed to hold safety critical positions.
Safety Sensitive Positions	are railway positions where impaired performance may put public safety at occasional risk as well as put at risk the safety of employees, customers, customer's employees, property or the environment. Safety sensitive positions are listed at Appendix B of the Fitness to Work Medical Policy for Safety Critical and Safety Sensitive Positions CPR (Canada) and are reviewed periodically to reflect any changes in job function. All persons who may perform any of these functions are deemed to hold safety sensitive positions.
Substance	includes alcohol and drugs, the use of which has the potential to change or adversely affect the way a person thinks, feels or acts. For the purposes of this policy, substances of concern are those that may inhibit an employee's ability to perform their job safely and meet performance expectations.
Substance Abuse	includes the continued use of alcohol or drugs despite the knowledge of recurring disturbance in health, work or social functioning.

Substance                      involves a physical or psychological dependence on  
Dependence                  alcohol and/or drugs.

## Appendix 12

### Excerpts from the Canadian Transportation Accident Investigation and Safety Board Act

#### Powers of investigators

19. (1) Where an investigator believes on reasonable grounds that there is, or may be, at or in any place, any thing relevant to the conduct of an investigation of a transportation occurrence, the investigator may, subject to subsection (2), enter and search that place for any such thing, and seize any such thing that is found in the course of that search.

#### Conditions for exercise of powers under subsection (1)

(2) An investigator shall not exercise the powers referred to in subsection (1) in relation to a particular place without the consent of the person apparently in charge of that place unless

(a) those powers are so exercised in relation to that place under the authority of a warrant, or

(b) by reason of exigent circumstances, it would not be practical for the investigator to obtain a warrant.

#### Issue of warrant authorizing exercise of powers under subsection (1)

(3) Where a justice of the peace is satisfied by information on oath that an investigator believes on reasonable grounds that there is, or may be, at or in any place, any thing relevant to the conduct of an investigation of a transportation occurrence, the justice may, on *ex parte* application, issue a warrant signed by the justice authorizing the investigator to enter and search that place for any such thing and to seize any such thing found in the course of that search.

#### Warrants may be obtained by telephone, etc.

(4) The procedure set out in section 487.1 of the *Criminal Code* applies in relation to the obtaining of warrants under this section, subject to regulations made under paragraph 34(1)(h).

#### Power to test things seized, etc.

(5) Where any thing is seized by an investigator under subsection (1), the investigator

(a) may, subject to paragraph (b), cause such tests, including tests to destruction, to be conducted on the thing as are necessary for the purposes of the investigation in respect of which the thing was seized;

(b) shall, to the extent that it is practical and safe to do so and does not unreasonably impede the progress of the investigation,

(i) take all reasonable measures to invite the owner of the thing, and any person who appears on reasonable grounds to be entitled to it, to be present at any tests referred to in paragraph (a), and

(ii) allow persons referred to in subparagraph (i) to be present at those tests; and

(c) subject to the need to conduct such tests, shall cause the thing to be

preserved pending its return in accordance with section 20.

Power to exclude persons from particular areas

(6) An investigator may, for the purposes of preserving and protecting any thing involved or likely to have been involved in a transportation occurrence, whether or not the thing has been seized under this section, prohibit or limit access to the area immediately surrounding the place at which the thing is located for such period as is necessary for the purposes of the investigation of the transportation occurrence.

Disruption to be minimized

(7) In exercising the power conferred by subsection (6), an investigator shall have regard to the desirability of minimizing any resulting disruption to transportation services.

Offence in respect of exclusion order

(8) No person shall knowingly enter an area in contravention of a prohibition or limitation of access pursuant to subsection (6).

Additional powers of investigators

(9) An investigator who is investigating a transportation occurrence may

(a) where the investigator believes on reasonable grounds that a person is in possession of information relevant to that investigation,

(i) by notice in writing signed by the investigator, require the person to produce the information to the investigator or to attend before the investigator and give a statement referred to in section 30, under oath or solemn affirmation if required by the investigator, and

(ii) make such copies of or take such extracts from the information as the investigator deems necessary for the purposes of the investigation;

(b) where the investigator believes on reasonable grounds that the medical examination of a person who is directly or indirectly involved in the operation of an aircraft, ship, rolling stock or pipeline is, or may be, relevant to the investigation, by notice in writing signed by the investigator, require the person to submit to a medical examination;

(c) where the investigator believes on reasonable grounds that a physician or other health practitioner has information concerning a patient that is relevant to that investigation, by notice in writing signed by the investigator, require the physician or practitioner to provide that information to the investigator; or

(d) where the investigator believes on reasonable grounds that the performance of an autopsy on the body of a deceased person, or the carrying out of other medical examinations of human remains, is, or may be, relevant to the conduct of the investigation, cause such an autopsy or medical examination to be performed and, for that purpose, by notice in writing signed by the investigator, require the person having custody of the body of the deceased person or other human remains to permit the performance of that autopsy or that medical examination.

Persons to comply with requirements imposed under paragraph (9)(a), (c) or (d)

(10) No person shall refuse or fail to produce information to an investigator, or to attend before an investigator and give a statement, in accordance with a requirement imposed under paragraph (9)(a), or to provide information in accordance with a requirement imposed under paragraph (9)(c) or to make the body of a deceased person or other human remains available for the performance of an autopsy or medical examination in accordance with a requirement imposed

under paragraph (9)(d).

Persons to comply with requirements imposed under paragraph (9)(b)

(11) No person shall refuse or fail to submit to a medical examination in accordance with a requirement imposed under paragraph (9)(b), but information obtained pursuant to such an examination is privileged and, subject to the power of the Board to make such use of it as the Board considers necessary in the interests of transportation safety, no person shall

(a) knowingly communicate it or permit it to be communicated to any person; or

(b) be required to produce it or give evidence relating to it in any legal, disciplinary or other proceedings.

Certificate to be produced

(12) Before acting under this section, an investigator shall, on request, produce the investigator's certificate of appointment to any person in relation to whom the investigator acts.

Meaning of medical examination for certain purposes

(13) The requirement under subsection (9) that a person submit to a medical examination shall not be construed as a requirement that the person submit to any procedure involving surgery, perforation of the skin or any external tissue or the entry into the body of any drug or foreign substance.

Idem

(14) Nothing in this section shall be taken

(a) to imply that a thing seized pursuant to subsection (1) may not be an aircraft, a ship, an item of rolling stock or a pipeline, or any part thereof; or

(b) to authorize the exercise of a power by an investigator in circumstances where the exercise of that power would be inconsistent with section 18.

Use of force

(15) In executing a warrant under this section, an investigator shall not use force unless the investigator is accompanied by a peace officer and the use of force is specifically authorized in the warrant.

Failure to produce document, etc.

(15.1) Where an investigator has required a person to do something under paragraph (9)(a), (b), (c) or (d) and the person has refused to do as required, the investigator may make an application to the Federal Court or a superior court of a province setting out the facts, and the court may inquire into the matter and, after giving the person an opportunity to comply with the requirement, take steps for the punishment of the person as if the person had been guilty of contempt of the court, or may make such other order as it finds appropriate.

Definitions

(16) In this section,

"document" [Repealed, 1998, c. 20, s. 13]

"information"  
« renseignements »

"information" includes a record regardless of form and a copy of a record;

"place" « lieu »

"place" includes

(a) an aircraft, a ship, rolling stock, any other vessel or vehicle and a

pipeline, and

(b) any premises or any building or other structure erected on those premises.

1989, c. 3, s. 19; 1998, c. 20, ss. 13, 24.

Return of seized property

**20.** (1) Any thing seized pursuant to section 19, except recordings as defined in subsection 28(1), shall, unless

(a) the owner thereof or a person who appears on reasonable grounds to be entitled thereto consents otherwise in writing, or

(b) a court of competent jurisdiction orders otherwise,

be returned to that owner or person, or to the person from whom it was seized, as soon as possible after it has served the purpose for which it was seized.

Application for return

(2) A person from whom any thing was seized pursuant to section 19, except recordings as defined in subsection 28(1), or the owner or any other person who appears on reasonable grounds to be entitled thereto, may apply to a court of competent jurisdiction for an order that the seized thing be returned to the person making the application.

Order for return

(3) Where, on an application under subsection (2), the court is satisfied that the seized thing has served the purpose for which it was seized or should, in the interests of justice, be returned to the applicant, the court may grant the application and order the seized thing to be returned to the applicant, subject to any terms or conditions that appear necessary or desirable to ensure that the thing is safeguarded and preserved for any purpose for which it may subsequently be required by the Board under this Act.

Exception

(4) This section does not apply in respect of any thing seized and tested to destruction in accordance with subsection 19(5).

Public inquiry

**21.** (1) Where, in the course of an investigation of a transportation occurrence, the Board considers it necessary that a public inquiry be made into the transportation occurrence and the Governor in Council has not caused a public inquiry to be made under Part I of the *Inquiries Act*, the Chairperson may, subject to section 18, designate a person or persons, who may be or include the Chairperson, to conduct a public inquiry into that transportation occurrence in accordance with any regulations made under section 34 and to report to the Board thereon.

Powers of persons conducting a public inquiry

(2) Any person designated to conduct a public inquiry under subsection (1) has and may exercise the powers of a person appointed as a commissioner under Part I of the *Inquiries Act*, subject to any restrictions specified in the designation.

## **Appendix 13**

### **Excerpts from Ontario Coroners Act R.S.O. 1990, c. C-37**

#### **Power of coroner to take charge of wreckage**

**12.** (1) Where a coroner has issued a warrant to take possession of the body of a person who has met death by violence in a wreck, the coroner may, with the approval of the Chief Coroner, take charge of the wreckage and place one or more police officers in charge of it so as to prevent persons from disturbing it until the jury at the inquest has viewed it, or the coroner has made such examination as he or she considers necessary. R.S.O. 1990, c. C.37, s. 12 (1).

#### **View to be expedited**

(2) The jury or coroner, as the case may be, shall view the wreckage at the earliest moment possible. R.S.O. 1990, c. C.37, s. 12 (2).

#### **Shipment of bodies outside Ontario**

**13.** (1) Subject to section 14, no person shall accept for shipment or ship or take a dead body from any place in Ontario to any place outside Ontario unless a certificate of a coroner has been obtained certifying that there exists no reason for further examination of the body. R.S.O. 1990, c. C.37, s. 13 (1).

#### **Fee for certificate**

(2) An applicant for a certificate under subsection (1) shall pay to the coroner such fee as is prescribed therefor. R.S.O. 1990, c. C.37, s. 13 (2).

#### **Embalming, etc., prohibited**

(3) No person who has reason to believe that a dead body will be shipped or taken to a place outside Ontario shall embalm or make any alteration to the body or apply any chemical to the body, internally or externally, until the certificate required by subsection (1) has been issued. R.S.O. 1990, c. C.37, s. 13 (3).

#### **Transportation of a body out of Ontario**

**14.** A coroner may in writing authorize the transportation of a body out of Ontario for *post mortem* examination and, in such case a provision in any Act or regulation

requiring embalming and preparation by a funeral director does not apply. R.S.O. 1990, c. C.37, s. 14.

#### Warrant for possession of body; investigation

**15.** (1) Where a coroner is informed that there is in his or her jurisdiction the body of a person and that there is reason to believe that the person died in any of the circumstances mentioned in section 10, the coroner shall issue a warrant to take possession of the body and shall view the body and make such further investigation as is required to enable the coroner to determine whether or not an inquest is necessary. R.S.O. 1990, c. C.37, s. 15 (1).

#### Idem

(2) Where the Chief Coroner has reason to believe that a person died in any of the circumstances mentioned in section 10 and no warrant has been issued to take possession of the body, he or she may issue the warrant or direct any coroner to do so. R.S.O. 1990, c. C.37, s. 15 (2).

#### Jurisdiction

(3) After the issue of the warrant, no other coroner shall issue a warrant or interfere in the case, except the Chief Coroner or except under the instructions of the Minister. R.S.O. 1990, c. C.37, s. 15 (3).

#### Expert assistance

(4) Subject to the approval of the Chief Coroner, a coroner may obtain assistance or retain expert services for all or any part of his or her investigation or inquest. R.S.O. 1990, c. C.37, s. 15 (4).

#### No warrant

(5) A coroner may proceed with an investigation without taking possession of the body where the body has been destroyed in whole or in part or is lying in a place from which it cannot be recovered or has been removed from Ontario. R.S.O. 1990, c. C.37, s. 15 (5).

#### Investigative powers

**16.** (1) A coroner may,

- (a) view or take possession of any dead body, or both; and



(b) enter and inspect any place where a dead body is and any place from which the coroner has reasonable grounds for believing the body was removed. R.S.O. 1990, c. C.37, s. 16 (1).

#### Idem

(2) A coroner who believes on reasonable and probable grounds that to do so is necessary for the purposes of the investigation may,

(a) inspect any place in which the deceased person was, or in which the coroner has reasonable grounds to believe the deceased person was, prior to his or her death;

(b) inspect and extract information from any records or writings relating to the deceased or his or her circumstances and reproduce such copies therefrom as the coroner believes necessary;

(c) seize anything that the coroner has reasonable grounds to believe is material to the purposes of the investigation. R.S.O. 1990, c. C.37, s. 16 (2).

#### Delegation of powers

(3) A coroner may authorize a legally qualified medical practitioner or a police officer to exercise all or any of the coroner's powers under subsection (1). R.S.O. 1990, c. C.37, s. 16 (3).

#### Idem

(4) A coroner may, where in his or her opinion it is necessary for the purposes of the investigation, authorize a legally qualified medical practitioner or a police officer to exercise all or any of the coroner's powers under clauses (2) (a), (b) and (c) but, where such power is conditional on the belief of the coroner, the requisite belief shall be that of the coroner personally. R.S.O. 1990, c. C.37, s. 16 (4).

#### Return of things seized

(5) Where a coroner seizes anything under clause (2) (c), he or she shall place it in the custody of a police officer for safekeeping and shall return it to the person from whom it was seized as soon as is practicable after the conclusion of the investigation or, where there is an inquest, of the inquest, unless the coroner is authorized or required by law to dispose of it otherwise. R.S.O. 1990, c. C.37, s. 16 (5).

#### Obstruction of coroner

(6) No person shall knowingly,

(a) hinder, obstruct or interfere with or attempt to hinder, obstruct or interfere with; or

(b) furnish with false information or refuse or neglect to furnish information to,

a coroner in the performance of his or her duties or a person authorized by the coroner in connection with an investigation. R.S.O. 1990, c. C.37, s. 16 (6).

